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No. 10,082

14  
**United States**  
**Circuit Court of Appeals**

For the Ninth Circuit. Vol  
2324

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,  
a corporation,

Respondent.

**Transcript of Record**

In Two Volumes

**VOLUME I**

Pages 1 to 476


Upon Petition for Enforcement of an Order  
of the National Labor Relations Board

FILED

MAY 20 1942

PAUL P. O'BRIEN,

CLERK



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No. 10,082

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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VOLUME I

Pages 1 to 476

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Upon Petition for Enforcement of an Order  
of the National Labor Relations Board





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT 1-B

United States of America  
Before the National Labor Relations Board  
21st Region

Case No. XXI C 1512  
Date filed 10/26, 1940  
1 inv.

In the Matter of

GERMAIN SEED & PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF AMERICA,  
LOCAL No. 595, A. F. L.

CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed & Plant Company, 747 Terminal St., Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On October 25, 1940, it, by its officers, agents and employees terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization,

and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS,  
CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF  
AMERICA, LOCAL No. 595

By: RALPH WOOLPERT,  
Assistant Rep.  
730 South Grand Ave.,  
Los Angeles, Calif.

Subscribed and sworn to before me this 26 day  
of October, 1940 at Los Angeles, Calif.

GEO. A. YAGER

National Labor Relations Board  
U. S. Post Office & Court House  
Bldg.  
Los Angeles, California.

BOARD'S EXHIBIT 1-C

[Title of Board and Cause.]

Date filed 11/12, 1940

275 inv.

AMENDED CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal St., Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that

In September, 1937 the Germain Seed & Plant Company, by its officers, agents and employees, did form and sponsor the Consolidated Seedmen's Union, Inc. and did dominate and interfere with the administration of the said Consolidated Seedmen's Union, Inc.

And on October 25, 1940 it, by its officers, agents and employees, terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization, and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraphs above and by other acts and conduct, it, by its officers,

agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS,  
CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF  
AMERICA, LOCAL No. 595

By: RALPH WOOLPERT

Assistant Representative  
730 South Grand Ave., Los  
Angeles, Calif  
VA 0831

Subscribed and sworn to before me this 12th day  
of November, 1940 at Los Angeles, Calif.

JOSEPH D. GOULD,  
Field Examiner  
National Labor Relations  
Board  
U. S. Post Office & Court  
House Bldg.  
Los Angeles, California

BOARD'S EXHIBIT 1-D

[Title of Board and Cause.]

Date filed 1/10 1941

275 inv.

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal St., Los Angeles, California, Merchants and Manufacturers' Association, 725 So. Spring St., Los Angeles, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that in September, 1937, the Germain Seed and Plant Company and the Merchants and Manufacturers' Association of Los Angeles, acting directly and indirectly in the interest of said Germain Seed & Plant Company, by their officers, agents and employees, form, sponsored, dominated and interfered with the administration of a labor organization known as the Consolidated Seedmen's Union, Inc., and at all times since that date have dominated and interfered with the operation and administration of said Consolidated Seedmen's Union, Inc.

And on October 25, 1940, it, by its officers, agents and employees, terminated the employment of C. J. Loy, order clerk, because of his membership and activities in behalf of the International Brother-



hood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, a labor organization, and at all times since such date it has refused and does now refuse to employ the above named employee.

By the acts set forth in the paragraphs above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the mean of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF AMER-  
ICA, LOCAL No. 595

By RALPH WOOLPERT,

Assistant Representative, 730 South Grand  
Ave., Los Angeles, Calif. TU 1543.

Subscribed and sworn to before me this 10th day  
of January, 1941, at Los Angeles, Calif.

JOSEPH D. GOULD,

Field Examiner

National Labor Relations Board, 808 U. S. Post-  
office & Courthouse Bldg., Los Angeles, California.

BOARD'S EXHIBIT 1-E

[Title of Board and Cause.]

Date filed Feb. 28, 1941

THIRD AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Germain Seed and Plant Company, 747 Terminal Street, Los Angeles, Calif., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that in September, 1937, the Germain Seed and Plant Company by its officers, agents and employees, formed, sponsored, dominated and interfered with the administration of a labor organization known as the Consolidated Seedmen's Union, Inc., and at all times since that date has dominated and interfered with the operation and administration of said Consolidated Seedmen's Union, Inc.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organiza-

tion, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF AMER-  
ICA, LOCAL NO. 595, AFL

By R. W. WOOLPERT,

Assistant Representative.

730 S. Grand Avenue, Los Angeles, Calif.  
TU. 1543.

Subscribed and sworn to before me this 28th day  
of February, 1941, at Los Angeles, Calif.

JOSEPH D. GOULD,

Field Examiner, National Labor Relations Board,  
808 U. S. Postoffice Bldg., Los Angeles, Calif.

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BOARD'S EXHIBIT 1-F

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Brother-  
hood of Teamsters, Chauffeurs, Warehousemen &  
Helpers of America, Local No. 595, chartered by  
American Federation of Labor, that Germain Seed  
& Plant Company, hereinafter called "Respondent,"  
has engaged in and is engaging in at Los Angeles,  
California, certain unfair labor practices affecting  
commerce, as set forth and defined in National La-  
bor Relations Act, approved July 5, 1935, 49 Stat.  
449, hereinafter referred to as "Act," the National



Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said National Labor Relations Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said Respondent has its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, and is engaged in the growing, buying, refining and sale of various types of seeds and bulbs and in the purchase and sale of insecticides, poultry and garden supplies and remedies and hardware, etc.

2. Respondent, in the course and conduct of its business just described, causes and continuously has caused large quantities of the above-mentioned products to be transported into and out of the State of California in interstate and foreign commerce from and to states of the United States other than said State of California, and foreign countries.

3. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 595, chartered by American Federation of Labor and hereinafter called "Union," and Consolidated Seedmen's Union, Inc., an unaffiliated labor organization, hereinafter called "Consolidated," are

labor organizations, and each of them is a labor organization within the meaning of Section (2), subsection (5) of the Act.

4. In or about August, September and October, 1937, and at all times thereafter up to and including the date of this Complaint, Respondent, acting through its officers, agents, servants, intermediaries and others, including without limitation, Manfred Meyberg, W. J. Schoenfeld, W. J. Sage, Dwight B. Gates, Woolcott Hill, A. Hook, C. R. Luck, D. G. Hatfield, Vivian J. Nesbit, Harold Frauenberger, all being supervisory employees of the Respondent, J. P. Voorhees, attorney, Viola B. Gates, John W. Butterfield, and Dorothy Turton, employees, dominated and interfered with the formation and administration of Consolidated and contributed support and assistance to it by setting it up at a time when several of its employees were indicating their interest in an affiliated labor organization through said Sage calling a meeting on Respondent's time and/or property in the warehouse at which meeting Sage advised the employees of the Respondent there assembled to form an unaffiliated labor organization on pain of the Respondent's otherwise ceasing its business, through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations, through said Sage, Nesbit and Frauenberger and others on Respondent's time and/or property thereafter open-

ly campaigning for the formation of an unaffiliated labor organization, through said Voorhees conducting meetings on Respondent's time and/or property at Respondent's warehouse and "Hill Street store" leading to the formation of Consolidated, through certain of Respondent's supervisory personnel attending and participating in the above-mentioned meetings, through the Respondent thereafter conducting on its time and/or property an election among its employees to determine their choice of a bargaining agent which was perforce Consolidated; by thereafter assisting Consolidated through allowing it the use of Respondent's facilities for the posting of bulletins and notices, Respondent's messenger system and other facilities; by controlling Consolidated at all times mentioned in this Complaint up to and including its date, through allowing and/or having individuals representing and acting in the interest of Respondent among the membership and leadership of Consolidated; by canalizing all collective bargaining efforts of its employees into Consolidated through according it in practice a virtual closed shop and by in September, 1940, advising certain of its employees that their requests for wage increases be made through Consolidated and by thereafter giving credit to Consolidated for the wage increases granted and by committing other acts of substantially similar nature and import.

5. By the commission of the acts set forth in the immediately preceding paragraph numbered "4" and by the commission of other acts of substantially

similar nature and import and by the commission of each of them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

6. In or about August, September and October, 1937, and in or about September, October and November, 1940, and in the intervening period between the dates just mentioned and thereafter up to and including the date of this Complaint, Respondent, acting through said Meyberg, Schoenfeld, Hill, Nesbit and others, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act by committing the acts above set forth in the Paragraph numbered "4"; in or about September and/or October, 1940, at a time when the several of its employees had signified their interest in the Union as their bargaining agent, by announcing and putting into effect general wage increases; through said Meyberg, Hill and others by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union and by uttering remarks disparaging to said Union and by committing other acts of substantially similar nature and import.

7. By the commission of the acts set forth in the preceding paragraphs numbered "4" and "6" and by the commission of other acts of substantially similar nature and import and by the commission of each of them, Respondent has engaged in and is



engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

8. The acts of Respondent set forth in the preceding paragraphs numbered "4" and "6", occurring in connection with the operation of its business as described in the preceding paragraphs numbered "1" and "2" have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

9. The acts of Respondent set forth in the preceding paragraphs numbered "4" and "6" constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (2) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of April, 1941, issues its Complaint against Germain Seed & Plant Company, Respondent herein.

#### NOTICE OF HEARING

Please Take Notice That on the 17th day of April, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23 of its Rules and Regulations, Series 2, as

amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You Are Further Notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 17th day of April, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director for its Twenty-first Region on the 5th day of April, 1941.

(Seal)

WALTER P. SPRECKELS,  
Regional Director, Twenty-  
first Region  
National Labor Relations  
Board  
808 U. S. Post Office &  
Court House  
Los Angeles, California

April 5, 1941

I hereby acknowledge personal service of an exact and true copy of the within document.

GERMAIN SEED & PLANT  
COMPANY

By LATHAM & WATKINS,

Its Attorneys.

By PAUL R. WATKINS.

CONSOLIDATED SEEDMEN'S  
UNION, INC.

By A. HOOK,

Pres. Elect.

INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS,  
CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS  
OF AMERICA, LOCAL No.  
595, AFL

By DONALD E. JOHNSON

Business Rep.

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BOARD'S EXHIBIT 1-L

[Title of Board and Cause.]

MOTION TO STRIKE

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the following portions of the complaint on file herein be stricken:

1. That portion of Paragraph 4 appearing on page 2 which reads as follows: "through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations".

2. That portion of Paragraph 4 appearing on page 3, immediately preceding Paragraph 5, and which reads as follows: "and by committing other acts of substantially similar nature and import".

3. That portion of Paragraph 5 appearing on page 3 which reads as follows: "and by the commission of other acts of substantially similar nature and import".

4. That portion of Paragraph 6 appearing on page 4 which reads as follows: "by attempting in divers manners to persuade and coerce various of its employees".

5. That portion of Paragraph 6 appearing on page 4 which reads as follows: "and by committing other acts of substantially similar nature and import".

6. That portion of Paragraph 7 appearing on page 4 which reads as follows: "and by the commission of other acts of substantially similar nature and import".

The basis for this motion to strike the foregoing portions of the complaint on file herein is that the said statements consist of conclusions, and in addition thereto are generalities, and are unintelli-



gible in the absence of some further explanation of their meaning.

Wherefore, respondent prays that the portions of the complaint hereinabove set forth be stricken.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

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BOARD'S EXHIBIT 1-M

[Title of Board and Cause.]

MOTION TO DISMISS

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the complaint on file herein be dismissed for the following reasons:

1. The respondent is not in commerce within the meaning of the National Labor Relations Act, and the National Labor Relations Board has no jurisdiction over respondent's operations or practices.

2. The third amended charge on file herein, and on which the complaint is based, does not conform to Article II, Section 4, particularly subdivision (c) of the Rules and Regulations, Series 2, of the National Labor Relations Board.

Wherefore, respondent prays that the complaint on file herein be forthwith dismissed.

GERMAIN SEED AND PLANT CO.

By LATHAM & WATKINS,

Its Attorneys

By PAUL R. WATKINS

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BOARD'S EXHIBIT 1-N

[Title of Board and Cause.]

DEMAND FOR PARTICULARS

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, hereby moves that the complaint on file herein be made more certain, and that the National Labor Relations Board be required to furnish a bill of particulars with regard to the following matters:

The alleged facts set forth in Paragraphs 4, 5, 6 and 7 of the complaint, particularly with regard to the following allegations:

1. In Paragraph 4 on page 2 the allegation that "In or about August, September and October, 1937, and at all times thereafter . . . Respondent, acting through its officers, agents . . . dominated and interfered with the formation and administration of Consolidated and contributed support and assistance to it".

2. In Paragraph 4 on page 2 the allegation that “through said Sage calling a meeting on Respondent’s time and/or property”.

3. In Paragraph 4 on page 2 the allegation that “through Respondent thereafter posting a notice to its employees indicating unmistakably its hostility to its employees joining or otherwise participating in legitimate labor organizations”.

4. In Paragraph 4 on page 2 the allegation that “through said Sage, Nesbit and Frauenberger and others on Respondent’s time and/or property thereafter openly campaigning for the formation of an unaffiliated labor organization, through said Voorhees conducting meetings on Respondent’s time and/or property”.

5. In Paragraph 4 on page 3 the allegation that “through certain of Respondent’s supervisory personnel attending and participating in the above-mentioned meetings”.

6. In Paragraph 4 on page 3 the allegation that “by thereafter assisting Consolidated through allowing it the use of Respondent’s facilities for the posting of bulletins and notices, Respondent’s messenger system and other facilities”.

7. In Paragraph 4 on page 3 the allegation that “by controlling Consolidated . . . through allowing and/or having individuals representing and acting in the interest of Respondent”.

8. In Paragraph 4 on page 3 the allegation that “by canalizing all collective bargaining efforts of its

employees into Consolidated through according it in practice a virtual closed shop".

9. In Paragraph 4 on page 3 the allegation that "and by committing other acts of substantially similar nature and import".

10. In Paragraph 5 on page 3 the allegation that "and by the commission of other acts of substantially similar nature and import".

11. In Paragraph 6 on page 4 the allegation that "by attempting in divers manners to persuade and coerce various of its employees . . . by uttering remarks disparaging to said Union".

12. In Paragraph 6 on page 4 the allegations that "and by committing other acts of substantially similar nature and import".

13. In Paragraph 7 on page 4 the allegation that "and by the commission of other acts of substantially similar nature and import".

The basis for the foregoing motion is that the allegations hereinabove set forth are vague, uncertain, unintelligible; are generalities; are conclusions; and because of their general nature do not apprise the respondent of the alleged acts in sufficient detail or preciseness to enable respondent to answer or defend the alleged charges.

Wherefore, respondent prays that the National Labor Relations Board be required to make the foregoing allegations more certain, and to furnish respondent with a bill of particulars with regard to each of said allegations within sufficient time prior

to the hearing to enable respondent to adequately prepare its defense for said hearing.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

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[Title of Board and Cause.]

ANSWER

Germain Seed and Plant Co., sued and served herein as Germain Seed & Plant Company, respondent in the above-entitled action, for answer to the complaint on file herein hereby admits, denies, alleges, and explains as follows:

1. Admits the allegations contained in Paragraph 1.

2. Denies the allegations contained in Paragraph 2, and in this connection alleges that while some of respondent's products therein mentioned may be transported into and out of the State of California, the amount thereof is not substantial and does not constitute commerce subject to regulation under the National Labor Relations Act.

3. Admits the allegations contained in Paragraph 3.

4. Denies generally and specifically each and every allegation, matter, and fact contained in Paragraph 4, and in this connection alleges that respondent has at all times purposely and inten-



tionally refrained from interfering in any manner whatsoever with the labor union affiliation of any of its employees. Further in this connection respondent states that it is unable to make a more specific denial of separate allegations contained in said Paragraph 4, because said allegations are of such a general nature without time or place or detail of facts being given that it is impossible to know or ascertain the happenings which the complaint there seeks to allege.

5. Denies each and every allegation, matter, and fact contained in Paragraph 5, and in this connection alleges that it is impossible for respondent to answer the particular allegations contained in said Paragraph 5, incorporated in Paragraph 4 of the complaint, for the same reasons hereinabove set forth in Paragraph 4 of this answer.

6. Denies generally and specifically each and every allegation, matter, and fact contained in Paragraph 6, and in this connection alleges that some general wage increases were put into effect, but not for any of the purposes alleged in said Paragraph 6. Further in this connection respondent states that it is unable to answer specifically the allegations contained in said Paragraph 6 for the reasons hereinabove set forth in Paragraph 4 hereof with respect to the generality of such allegations.

7. Denies each and every allegation, matter, and fact contained in Paragraph 7, and in this connection alleges that respondent is unable to answer specifically any of the allegations therein contained

for the reasons set forth hereinabove in Paragraphs 4 and 6 with respect to the generality of the allegations therein contained or incorporated in Paragraph 7 by reference.

8. Denies each and every allegation, matter, and fact contained in Paragraph 8, and on the contrary alleges that any and all activity which has taken place in connection with the matters set forth in the complaint has tended to avoid labor disputes, and further that the charges on file herein and the complaint here being answered do and will lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

9. Denies each and every allegation, matter, and fact contained in Paragraph 9, and in this connection by way of explanation incorporates in this Paragraph 9 respondent's answer hereinabove set forth in Paragraphs 4 and 6.

Wherefore, respondent prays that the complaint on file herein be forthwith dismissed with prejudice.

Respectfully submitted,

LATHAM & WATKINS

By PAUL R. WATKINS

Attorneys for Respondent

State of California,  
County of Los Angeles—ss.

Manfred Meyberg, being first duly sworn, deposes and says:

That he is an officer, to-wit, the President of Germain Seed and Plant Co., the respondent above-named; that he makes this verification for and on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to matters stated upon information and belief, and as to those matters he believes it to be true.

MANFRED MEYBERG

Subscribed and sworn to before me this 19 day of April, 1941.

[Seal]

EARL E. SIDEBOTTOM

Notary Public in and for the County of Los Angeles, State of California.



United States of America  
Before the National Labor Relations Board  
Twenty-first Region  
Case No. XXI-C-1512

In the Matter of GERMAIN SEED AND  
PLANT COMPANY<sup>1</sup> and INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN &  
HELPERS OF AMERICA, LOCAL No.  
595, AFL.

Mr. James A. Cobey,  
for the Board.

Latham & Watkins,  
By Mr. Paul R. Watkins,  
of Los Angeles, California,  
for the respondent.

Mr. Ralph Woolpert,  
of Burbank, California,  
for the Union.

INTERMEDIATE REPORT.

Statement of the Case

Upon an amended charge duly filed on February 28, 1941 by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of

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<sup>1</sup>The name of the respondent was corrected to read as above stated in all the formal papers, by motion granted at the hearing.

America, Local No. 595, AFL, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated April 5, 1941, against Germain Seed and Plant Company, Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With regard to the unfair labor practices the complaint alleged in substance that the respondent (1) by various specified acts on the part of its officers and agents dominated and interfered with the formation and administration of Consolidated Seedsmen's Union, Inc., herein called the Consolidated, and contributed support and assistance to it; and that (2) by the foregoing acts, by announcing and putting into effect general wage increases in September or October, 1940, by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union and by uttering remarks disparaging to the Union, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Copies of the complaint, accompanied by notice of hearing thereon to be held on April 17, 1941, and

of an order postponing the date of hearing to April 24, 1941, were duly served upon the respondent, the Union and the Consolidated.

On April 19, 1941, the respondent filed with the Regional Director a motion to dismiss the complaint on the grounds that the respondent is not in commerce within the meaning of the Act and that the charge upon which the complaint was issued does not conform to the Rules and Regulations of the Board; a motion to strike various portions of the complaint on the ground that they are conclusions, generalities and unintelligible; and a motion for a bill of particulars.

On April 23 the respondent filed its answer, in which it admitted the allegations of the complaint pertaining to its corporate existence, and the nature of its business, admitted that the Union and the Consolidated are labor organizations, but denied that a substantial amount of its products is transported in interstate commerce and denied that it had engaged in the unfair labor practices alleged in the complaint.

Pursuant to notice a hearing was held at Los Angeles, California, from April 24 to 28, 1941 before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The respondent and the Union appeared at the hearing, at which all parties were afforded an opportunity to be heard, to call, examine and cross-examine witnesses and to introduce evidence bearing on the issues.

At the beginning of the hearing the portion of the respondent's motion to dismiss the complaint predicated upon the alleged invalidity of the charge was denied by the undersigned. At the same time, decision was reserved upon the portion of said motion which was based upon the claim that the Board is without jurisdiction over the respondent. It is now denied. The motions for a bill of particulars and to strike certain allegations of the complaint were also denied by the undersigned, except that counsel for the Board was directed to particularize the allegation that the respondent had interfered with, restrained and coerced its employees "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union." Thereafter, this allegation was stricken by consent of the parties.

At the close of the hearing the parties were afforded opportunity to argue orally before the undersigned, and to file briefs with him within 15 days. No argument was had, but a brief has been filed by the respondent which has been carefully considered by the undersigned.

On June 13, 1941, pursuant to a request made by the undersigned, the parties entered into an additional stipulation concerning the business of the respondent. In accordance with its terms, said stipulation is hereby made part of the record as Trial Examiner's Exhibit No. 1.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:



## FINDINGS OF FACT.

### I. The Business of the Respondent<sup>2</sup>

Germain Seed and Plant Company is a California corporation, having its principal office and place of business at Los Angeles, California. It is engaged in the growing, purchasing and sale of seeds, bulbs, plants and nursery stock, and in the purchasing and sale of insecticides, poultry and garden supplies and remedies, hardware and other similar products.

The respondent operates a wholesale and warehouse department at 747 Terminal Street, Los Angeles, where a general wholesale and retail business is done; retail stores in Los Angeles, Salinas and Santa Maria, California; a retail store and nursery in Van Nuys, California; a warehouse and wholesale and retail store in San Francisco, California; a warehouse in Fresno, California; and a bulb farm at Camarillo, California.

During 1940 the respondent purchased products of the types above mentioned, valued at approximately \$900,000. About 17 per cent of these products, valued at about \$150,000 originated at points outside the State of California. During the same year the respondent sold products valued at approximately \$1,500,000. About 24 per cent of such sales, valued at about \$360,000, was shipped to points outside the State of California.

This proceeding concerns only the warehouse and retail store in Los Angeles, and the retail store and

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<sup>2</sup>The findings in this section are based upon stipulations of the parties.

nursery in Van Nuys. In the year 1940 the respondent's purchases for said warehouse amounted to \$719,860, of which 40 per cent was shipped from points outside the State of California. Sales made by said warehouse during the same period totalled \$873,968, of which 25 per cent was shipped to points outside the State of California. Approximately 90 percent of the business done at the Van Nuys retail store and nursery is handled through said warehouse, from which merchandise is shipped directly to customers of the Van Nuys establishment. Purchases made for the Los Angeles retail store in 1940 amounted to \$88,739, of which about 5 per cent was shipped to said store from points outside the State of California. Sales by the retail store during the same period totalled \$158,393.50, of which about 2 per cent was shipped from said store to points outside the State of California.<sup>3</sup>

On October 31, 1940 the respondent employed 176 workers, of whom 146 were employed at the Los Angeles and Van Nuys establishments.

## II. The Organizations Involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

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<sup>3</sup>The record does not disclose whether merchandise is shipped to this store from the warehouse, or whether any of the sales made at this store are shipped from the warehouse.

Consolidated Seedmen's Union, Inc. is an affiliated labor organization. Its membership is restricted to employees and former employees of the respondent.

### III. The Unfair Labor Practices

#### A. Interference, restraint and coercion, and domination of the Consolidated

##### 1. The organization of the Consolidated.

Commencing about August 1937, efforts were made by organizers for the A. F. of L. to organize the Los Angeles employees of the respondent. There was much discussion of the question of union organization among the employees. The activities of the union organizers were brought to the attention of Walter P. Sage, a purchasing agent for the respondent.

Sage has been in the employ of the respondent for 22 years. He was in charge of the shipping department for several years, then served as superintendent of the warehouse and order filling department for about 12 years and became purchasing agent in about 1933. As purchasing agent Sage was and is in charge of the purchase of insecticides, spray pumps and miscellaneous items. Meyberg, president of the respondent, testified that Sage was included among the small group of employees designated as "department managers." The undersigned finds that he was an executive of the respondent and

that he represented management in the activities hereinafter detailed.<sup>4</sup>

Sage testified that some of the employees discussed with him the desirability of organizing a union of some kind, but the only ones whose names he could recall were Nesbit and Hatfield, whose status is discussed below. Sage testified, further, and the undersigned finds that as a result of these discussions, he decided to call a meeting of the employees and that he "just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would." As a result, a meeting of 15 or 20 employees was held on the shipping floor of the Los Angeles warehouse after working hours on a Saturday in August, 1937.

Among those present at the meeting were Hill, manager of the shipping department, and Gates, manager of the warehouse and mill room. It is conceded that both these men were supervisory employees with authority to hire and discharge. Also present were Hatfield, Nesbit, Hook and Luck, all, as found below, representatives of the management.

Sage testified, and the undersigned finds, that prior to this meeting he had heard that an independent union was functioning at the local plant

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<sup>4</sup>That Sage exercised no supervisory authority over other employees in no way alters the facts that his executive position identified him with the management.



of the Cudahy Packing Company, and that he went there and conferred with one David Stratton, secretary and business agent of that independent union, for the purpose of obtaining more information about it. Stratton gave Sage the name of J. P. Voorhees as an attorney who was familiar with the organization of independent unions.

Sage presided at the meeting and was the only speaker. He testified, and the undersigned finds that he stated to the employees:

“Several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind”, and I made the suggestion that, “Perhaps you would like to have a little independent union of your own.”

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They said that they wanted to form the union, and I said, “Well, I think then you should have a legal man to do that for you.” And they asked me if I knew of anyone, and I told them I did through what Mr. Stratton told me about Mr. Voorhees, and that I would be glad to get a man for them if they wanted one.

The undersigned finds that Sage made additional statements attributed to him by witnesses Hulphers, Yoakum and Freeman, all employees of the respondent, to the following effect: That they were all one

happy family and wanted to be sure that what they did was right; that they should not do anything which might endanger their jobs; that the respondent would prefer a "house union" to an outside union and that Meyberg and Schoenfeld (president and vice-president of the respondent) had plenty of money and could close the plant down at any time.

About two weeks later Sage again held a meeting of the employees at the same place on a Saturday afternoon after working hours. Voorhees and Stratton were present. Sage introduced Voorhees as a lawyer experienced in the organization of independent unions. Voorhees told the employees that they could form any union they pleased without employer interference, explained the alleged advantages of independent unions over outside unions and advised them to incorporate. He also informed them that employees having the right to hire, discharge or discipline or occupying executive positions could not belong to a union. Hill raised a question about his right to be present and was told that both he and Gates should leave. They departed, but Sage, Nesbit, Hatfield, Hook and Luck remained. Voorhees then introduced Stratton, who spoke briefly about the success of the independent union at the Cudahy plant.

It was also suggested at this meeting that an election be held to determine the wishes of the employees before organization of an independent union was undertaken. Some witnesses attributed this suggestion to Sage, others to Voorhees. The

undersigned finds that the suggestion was made by Voorhees.

Two or three days later an election was held in the plant during working hours. Printed ballots, the source and authorship of which are not established by the record, were distributed to the employees, during working hours. It was testified by witness Kadous, and the undersigned finds, that the ballot boxes were placed in the various departments of the warehouse, the Hill Street store and the Van Nuys branch, that the employees voted at such times as they found convenient, and that the ballots were counted and tabulated on the shipping floor.<sup>5</sup>

The ballots gave the employees a choice among the C. I. O., the A. F. of L., an independent union and "Have Mr. Meyberg talk to us." Of 102 ballots cast, 45 were for an independent union, 33 for the A. F. of L., 11 for a talk by Meyberg, 3 for the C. I. O. and 10 were spoiled. Thus, the independent union received a minority of both the total number of ballots cast and the total number of valid ballots cast.

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<sup>5</sup>None of the witnesses was able to state how the group which counted the ballots was chosen. Among those in the group were W. S. Clark, who was in charge of the Van Nuys nursery, and Vivian Nesbit, hereinafter found to be a supervisory employee. Clark was included in a group of management representatives invited by the Consolidated to attend a dinner meeting on May 2, 1939, in order to promote a closer relationship between the Consolidated and the management.

A pre-organization committee was then created, composed of employees from the various departments. None of the witnesses including members of the committee was able to explain how the committee was chosen. The committee of seven included Clark, Frauenberger, Luck and Hook, all found herein to be representatives of management, and Dorothy Turton, secretary to vice-president Schoenfeld. The members of the pre-organizational committee circulated petitions designating them as "a committee to formulate an independent union" and to represent the employees for the purpose of collective bargaining and also collected initiation fees. These activities were carried on during working hours about September 1, 1937.

Among the signers of the petitions were Turton, Sage, Clark, O. E. Johnson, assistant manager of the Hill Street retail store. A. Stanley Williams, assistant to Earl E. Sidebottom, secretary-treasurer of the respondent, Nesbit, Hatfield, Hook, Frauenberger and Luck.

On September 9, 1937 Articles of Incorporation of the Consolidated, prepared by Voorhees, were executed. Including among the seven incorporators who also became the first Board of Directors, were Frauenberger, Turton, Hook, Luck and Clark.<sup>6</sup>

Following completion of the incorporation and the drafting of bylaws, another meeting of the

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<sup>6</sup>Clark and Hook resigned as directors on September 20, 1937.



employees was held in the respondent's Hill Street store. Voorhees testified, and the undersigned finds that at this meeting several employees raised a question about the right of Sage to belong to the Consolidated because he held a supervisory or executive position, that Voorhees then stated that "since they felt he was in that position . . . that he had no right in the meeting whatsoever," and asked Sage to leave. There is no evidence that Sage had any further connection with the Consolidated following this occurrence.

On September 28, 1937 the Consolidated informed the respondent that it represented a majority of the employees and submitted evidence in the form of signatures to the pre-organization petitions and membership applications in support of its claim. This evidence was duly checked by the respondent which, on October 1, recognized the Consolidated as exclusive representative of its employees at the Los Angeles and Van Nuys establishments.

It is necessary now to consider the evidence pertaining to the status of Frauenberger, Nesbit, Luck and Hook, all of whom were active in the organization of the Consolidated.

Frauenberger has been in the employ of the respondent for 14 years. He became the leader in the organization of the Consolidated after Sage's withdrawal. He was then city shipping clerk in the warehouse, Hill being his immediate superior. Frauenberger had no authority to hire, discharge,

or otherwise discipline employees. He was charged with the duty of relaying Hill's orders to the truck drivers, distributing work to them and directing their work, routing the trucks, checking out the loads, helping load the trucks and attending to complaints concerning deliveries.

Nesbit has been in the respondent's employ for 17 years and is an order filler on the fourth floor of the warehouse, his superior being either Hill or Gates. The number of employees on this floor ranges from two to five depending on the season. Nesbit denied that he was in charge of this floor, but explained that "my idea of being in charge is being in charge . . . so as to hire and fire." The testimony of Yoakum, Loy and Hulphers, credited by the undersigned, establishes that Nesbit directs the work of the other employees on the fourth floor.

Luck testified, and it is found, that he was head of the bulb department on the third floor of the warehouse. While he may sometimes be the sole employee in that department during the off-season, he has three or four other employees under him during the busy season. He supervises and inspects their work, takes care of the invoices and the buying. Concerning his authority to recommend hiring or discharging, he testified:

Well, I could certainly recommend it, whether I was in any position or not. I mean, as to having the ability to, why, in my department at times it was very busy and we did have more

people, and when some of them possibly weren't getting the job done, I would go to Mr. Pieters, who was in charge of that department as to hiring and firing, and tell him I would like to have somebody either replaced or put on some other job . . . I would possibly like recommend.

Hook, employed by the respondent for 18 years, operates the mills on the 6th floor of the warehouse, where the seeds are cleaned. During the busy season about 12 additional employees work in this department. Hook testified and it is found that he relays the orders of Foreman Gates to these employees as well as to the "bull gang"; that he is responsible for the proper performance of their work and that he guides and instructs them in their work; and that "If they don't do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do."

Hatfield, employed by the respondent for 22 years, fills seed orders on the 5th and 6th floors of the warehouse. He has one or more helpers, as the work requires. When he needs additional help, he asks Gates for it, but if the need is urgent, he testified, "I just grab anybody that is there," usually from the "bull gang." He directs and supervises the work of his helper or helpers and is responsible for the proper filling of seed orders.

One of the early demands made by the Consolidated was for "A better allotment and statement



concerning sub-foremen and their positions.”<sup>7</sup> It is evident from the record that Frauenberger, Nesbit, Luck, Hatfield and Hook are the only employees of the respondent who could be characterized as sub-foremen. Hook testified that this demand affected himself, Nesbit and Hatfield, and that they felt that they should get more pay than the ordinary employees “for being a little more responsible for the type of work we was doing.”

The undersigned is of the opinion and finds that these five men were working foremen with supervisory authority, despite their lack of authority to hire or discharge; that their interests were closely identified with those of the management; that in assisting in the organization of the Consolidated, they, together with Clark, Turton, Hill, Gates, Johnson and Williams, appeared to be and were acting in furtherance of the wishes of the respondent as expressed by Sage.

## 2. Subsequent history of the Consolidated

Early in October, 1937, the Consolidated prepared and submitted to Meyberg a list of 20 “Suggestions,” concerning wages, hours and working conditions. While many of these were statements of existing practices, several represented changes of

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<sup>7</sup>On December 22, 1937, the Consolidated issued a notice to its members setting forth “agreements obtained” from the respondent. One of the items claimed to have been agreed to was “A better allotment and statement concerning sub-foremen and their positions.”

substantial benefit to the employees. The respondent approved all but four of these suggestions, those rejected including changes in the length of the work week, 2 weeks vacation with pay and restoration of the 1929 wage scale. However, the respondent granted wage increases ranging from 5 to 18 per cent. The Consolidated did not ask that the respondent enter into a written agreement embodying the matters agreed to. On October 14, 1937, the Consolidated informed the respondent that its members had authorized its Board of Directors "to proceed with making definite agreements . . . as per the suggestions already presented . . .". It does not appear that anything further was done toward obtaining "definite agreements."<sup>8</sup>

On May 19, 1938, the Consolidated invited Meyberg and other representatives of the respondent to attend a picnic to be held on June 18, and asked him for the use of a company truck and for "any financial consideration that the firm would deem feasible." Meyberg granted the Consolidated the use of a truck, contributed \$10 toward the picnic and paid a fine incurred by the driver of the truck. On July 30, 1938, the Consolidated held a "Weenie Roast." Although the record does not show the precise nature of the respondent's contribution on this occa-

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<sup>8</sup>The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the President replied that this could not be done.

sion, it is evident that some was made, for, on September 7, 1938, the Consolidated wrote to Meyberg expressing thanks for "the help and cooperation you and the Germain Seed & Plant Company extended . . ." It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October, 1938.

The Consolidated attempted to secure preference in employment for its members and on several occasions furnished Meyberg with lists of unemployed members and employees not in good standing with the Consolidated. Although Meyberg denied having requested lists of delinquent members he admitted that he received such lists and stated that he used his own judgment in acting on them. The Consolidated informed delinquent members by letter that their names were being included on a list of "non-union members" which "goes to Mr. Meyberg each month" and that "any future lay-offs are to be chosen" from that list. On May 23, 1939, Hook received such a letter from the Consolidated. The undersigned credits Hook's undenied testimony that he went to Meyberg and asked whether the Consolidated had a closed-shop agreement, and whether he would be laid off if he did not pay his dues. To both these questions Meyberg replied in the negative, and then stated, "To keep harmony in the firm, it is better to join the union, the fifty cents a month doesn't break you . . . To keep harmony in the firm, it is best to join, to keep paying your

dues." Hook paid his dues and remained active in the Consolidated.

Jack Thrift testified that on October 10, 1940 he was asked by Hill, his foreman, whether he belonged to the Union; that when Thrift answered in the affirmative, Hill stated:

Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A. F. of L. and the C. I. O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C. S. U. [Consolidated] as well, they are taking care of you here, whereas the dues you are paying into the A. F. of L. is doing you no good. We don't want the A. F. of L. in here or any other union.

that Hill then asked him whether he could get a withdrawal card, and Thrift replied that he preferred to remain a union member. Although Thrift's version of this conversation on cross-examination was somewhat different, the substance of it was essentially the same. The record indicates that Thrift's job was in jeopardy at this time, Meyberg having told Hill a week earlier to keep Thrift on when it had been planned to lay him off. Hill was not called as a witness. The undersigned has carefully considered the testimony of Thrift and of Meyberg on this matter and finds that Hill made the statements attributed to him by Thrift.

Even after the increases granted by the respondent in October 1937, there was considerable dissatisfaction among the employees with the wage scale. On February 1, 1938, a petition was presented to the Consolidated on behalf of a group of employees by their representative, Hook, calling for, among other things, \$100 per month as a minimum wage for common labor. The Board of Directors of the Consolidated voted to take no action on this request, and nothing further was done about it up to August 20, 1940. At that time Hulphers again demanded action on this request. The minutes of a meeting held on that day state: "The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union." At the same meeting of the Consolidated a motion was carried requiring the president to "go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions."

Thereafter, as appears from the uncontradicted testimony of Loy which is credited by the undersigned, the members of the Consolidated were informed by their representatives that "it was absolutely impossible to get a raise". As a consequence, in the first week of September, 1940, a number of employees, including Hulphers, Loy and Montgomery, went to the offices of the Union and several of them signed applications for membership in the Union. The following morning Hulphers, Loy and



Montgomery went to see Meyberg. They told him that they had not been able to obtain satisfaction through the Consolidated, that there was unrest among the employees and that they wanted to consult him before going any further. Meyberg stated that he wished to speak to all of the employees. That evening, after working hours, practically all the men in the warehouse and some of the women gathered in Meyberg's office. Hulphers acted as spokesman for the employees and reiterated the substance of what had been told Meyberg that morning. There was some discussion of the possibility of the employees joining an outside union. Meyberg then stated that he would like to discuss the problem with the men only and suggested that he take them to dinner at a later date, following which further discussion could be had. Meyberg asked that, in the meantime, the men prepare a petition embodying their demands.

That this move for wage increases was a move by the employees themselves, wholly apart from the Consolidated, is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940:

Union [i.e., Consolidated] and non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

On September 17 Meyberg met with the men at the plant after having taken them to dinner. It



appears that on this occasion Butterfield, president of the Consolidated, presented two petitions to Meyberg, one which had been sponsored by the group led by Hulphers calling for a substantial wage increase and one which had been sponsored by Butterfield himself calling for a smaller increase. Neither of these had been authorized by the Consolidated, but the latter had voted to adopt the one bearing the larger number of signatures. The undersigned finds, on the basis of Hulpher's undenied testimony, that Meyberg addressed the employees, stating that he had heard of unrest among them, that "We are all here together, so we want to try to work all these things out among ourselves. We are one happy family . . ." He stated further that the Consolidated had not presented any demands for wage increases, but then said that whatever was done by him would be done through the Consolidated, and that any wage increases granted would be retroactive to September 15, 1940. Finally, he said, according to the undenied testimony of Hulphers, Loy and Yoakum, credited by the undersigned, "Give me a chance to do something. Being you come (sic) up here for the chance, before you do anything, before you call the doctor in, maybe it is not the right ailment. Maybe you have got the wrong ailment. Maybe you won't need the doctor." It is clear from the testimony of these witnesses that by the "doctor" Meyberg meant the Union. On October 3, 1940, Meyberg granted substantial wage increases, of which the employees were apprised

through notices sent by Meyberg to the Consolidated.

On October 8, 1940, Meyberg met with the Directors of the Consolidated to learn whether the various divisions were satisfied with the wage increases. The minutes of this meeting reveal that, with regard to some employees who were dissatisfied, namely, Wilford, Casey, Bushing and Cook, their grievances were disposed of by having Meyberg talk to them.

The uncontradicted testimony of numerous witnesses establishes and it is found that memberships in the Consolidated were solicited, and dues were customarily collected during working hours on the respondent's premises; that meeting notices were regularly posted over the time clocks in the various divisions, and that, on occasion, the Board of Directors of the Consolidated held meetings in the warehouse. Although the record establishes that the permission of the respondent was neither sought nor specifically given for these practices, and although on one occasion in the summer of 1940 Gates told Hook not to collect dues during working hours, it is clear that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.<sup>9</sup>

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<sup>9</sup>Contrary to the contention advanced in the respondent's brief, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.

Supervisory employees and management representatives have continued to play an active role in the Consolidated. Frauenberger was its president from September 1937 to April 5, 1938, Luck from April 1938 to April 1939, and Hook now occupies that office. Turton was secretary until June 7, 1938. The directors since the beginning of 1938 have included, at various times, Luck, Hook, Hatfield, Nesbit and Turton. Employees having the power to hire and discharge have been refused membership in the Consolidated.

At a meeting of the Directors of the Consolidated on February 5, 1941 it was decided that "it would be best to have any and all letters dictated by Mr. Meyberg concerning said Union [Consolidated] be dictated to a secretary holding Union [Consolidated] membership." Butterfield, who was then president of the Consolidated, testified that Meyberg was informed of the action of the Directors and that thereafter all letters to the Consolidated were initialled by one of its members instead of by the person who had theretofore done it. This testimony was not denied by Meyberg, and the undersigned finds that he complied with the request of the Directors as expressed in the minutes.

The respondent has consistently refused to enter into any written agreement with the Consolidated. The latter has acquiesced in this course of conduct. It has obtained minor concessions for the employees and the satisfactory disposition of grievances, when

Meyberg was willing to cooperate, but has been wholly ineffectual when its proposals to have run counter to his wishes. In matters of substance such as increased vacation privileges to employees with more than 5 years of service, requested by them since 1938, the Consolidated has been content with presenting the requests of its members. Similarly, the two-year-old demand of the employees for wage increases was met, in October 1940, only because of the threat that an outside union might be brought in.

### 3. Conclusions regarding the Consolidated

The Consolidated was created at the direct suggestion of, and as a result of intimidatory and coercive statements by Sage, a representative of the respondent. Its organization was accomplished as a result of meetings and other activities, conducted on the respondent's premises and during working hours, with the assistance of Sage, Hill, Gates, Clark, Turton, Johnson, Frauenberger, Hook, Luck, Hatfield and Nesbit, all supervisory employees or employees whose interests were identified with those of the respondent. That the Consolidated, upon the advice of the attorney recommended by Sage, thereafter ridded itself of Sage, Hill, Gates and other supervisors having the right to hire and discharge, in no way absolves the respondent of responsibility for the activities of its representatives in the initial organization of the Consolidated. The record affords no basis for the assumption that the Consolidated would have been created without the interference of



Sage, but it does warrant a contrary assumption. The policy of the Consolidated of refusing membership to employees with the right to hire and discharge cannot be accepted as showing emancipation from company domination, in the face of the continued membership and activity of supervisory employees and of others whose interests are identified with those of the respondent. The mere absence of power to hire or discharge is too narrow a basis for the determination of either the existence of supervisory authority or the liability of the respondent for the activities of its employees. The so-called election held in the plant in September 1937, during working hours and following the interference and coercion practiced by Sage, was, in itself, a further act of interference by the respondent and cannot be taken as reflecting the free choice of the employees. The respondent has at no time taken any action to disavow the conduct of Sage and its other representatives in instigating and assisting in the organization of the Consolidated.

The subsequent history of the Consolidated furnishes further evidence of domination by the respondent. With the exception of Sage, Hill and Gates, the same supervisory employees and other management representatives continued their membership and activity. The use of the respondent's premises and time for dues collection, membership solicitation, and circulation of petitions continued, as did the practice of posting meeting notices over

the time clocks. The Consolidated was granted the use of respondent's premises for at least one social function, and requested and received financial and other assistance from the respondent for others. That this assistance was given for social activities in no way detracts from its significance as a violation of the Act. The record establishes that social activities were most important to the Consolidated to stimulate the interest and attract the support of the employees.<sup>10</sup> The Consolidated at no time challenged the refusal of the respondent to grant it a written agreement, although the record is replete with evidence showing the need for such an agreement. As stated above, it has been ineffectual in bargaining on substantial matters. The raises of October, 1940, were granted as a result of the threat of and in order to prevent union organization. In granting them, and in insisting that they be granted as though the Consolidated had bargained for them, the respondent gave substantial support to that organization. Indicative of the respondent's antagonism to the Union is the evidence concerning Hill's statement to Thrift in October, 1940. Indicative of the affinity between the respondent and the Consolidated is the evidence concerning Hook's dues delinquency, and Meyberg's changing

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<sup>10</sup>Almost from its inception the Consolidated found it necessary to resort to various devices including the serving of refreshments and "Bank Nights" in an attempt to stimulate interest in its meetings.



of his stenographer at the request of the Consolidated.

The undersigned finds that the respondent dominated and interfered with the formation and administration of the Consolidated and contributed support to it, and that the respondent thereby, and by announcing and putting into effect the general wage increase in October 1940 and by the statements of Hill to Thrift disparaging the Union, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

The undersigned will recommend that the respondent cease and desist from the unfair labor practices in which it has engaged, as above found, and that it take certain affirmative action which will effectuate the purposes and policies of the Act.

It has been found that the respondent has dominated and interfered with the formation and admin-

istration of the Consolidated and contributed financial and other support to it. The Consolidated was created and has been utilized by the respondent as an instrumentality to defeat the rights of its employees under the Act. Because of the respondent's illegal conduct with relation to it, the Consolidated is incapable of serving the respondent's employees as their genuine collective bargaining agency. The effects and consequences of the respondent's domination, interference and support of the Consolidated, as well as continued recognition by the respondent of the Consolidated as bargaining representative of its employees, constitute a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. It will, therefore, be recommended that the respondent withdraw all recognition from the Consolidated as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Consolidated as such representative.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

## CONCLUSIONS OF LAW.

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, and Consolidated Seedsmen's Union, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of Consolidated Seedsmen's Union, Inc. and contributing support thereto, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Wherefore, the undersigned recommends that the respondent and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc. or with the formation or administration of any other labor organization of its employees, and from contributing support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said organization as such representative;

(b) Immediately post notices to its employees in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain such notices for a period of at least sixty (60) days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) hereof; and (2) that it will take the affirmative action set forth in paragraph 2 (a) hereof;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20)

days from the date of the receipt of a copy of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless, on or before twenty (20) days from the receipt of a copy of the Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

Any party may, within thirty (30) days after the date of the order transferring this case to the Board, pursuant to Section 32 of Article II of National Labor Relations Board Rules and Regulations, Series 2, as amended, file a brief with the Board, Shoreham Building, Washington, D. C. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board, pursuant to said Section 32 of said Article II.

Dated: June 17, 1941.

JAMES C. PARADISE,  
Trial Examiner.



TRIAL EXAMINER'S EXHIBIT No. 1

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. XXI-C-1512

In the Matter of

GERMAIN SEED AND PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL 595, A. F. L.

STIPULATION

It Is Hereby Stipulated And Agreed by and between Germain Seed and Plant Company and National Labor Relations Board, each through its undersigned counsel, that:

1. Germain Seed and Plant Company, hereinafter called "Respondent," is a California corporation having its principal office and place of business at 747 Terminal Street, Los Angeles, California. It is engaged in the growing, buying refining, and sale of seeds, bulbs, plants, nursery stock, insecticides, poultry, garden supplies and remedies, and hardware, etc.

2. In the conduct of this business Respondent operates several commercial establishments. One of these is a six story warehouse located at 747



Terminal Street, Los Angeles, California. This establishment is hereinafter referred to as "warehouse." Another is a retail store located at 625 South Hill Street, Los Angeles, California. This establishment is hereinafter referred to as "Hill Street store." A third is a retail store and nursery near Van Nuys, California. This establishment is hereinafter referred to as "nursery."

3. Approximately ninety per cent (90%) of the business done at the nursery is handled through the warehouse. Orders filled at the nursery are customarily placed with the Respondent at the warehouse and merchandise disposed of at the nursery is customarily sent to the warehouse on a merchandise transfer and is then shipped from the warehouse to the customers. During the calendar year January 1 through December 31, 1940, sales at the nursery amounted to approximately Sixty-eight Thousand Dollars (\$68,000).

4. During the calendar year, January 1 through December 31, 1940, the total purchases by the Respondent for the warehouse amounted to approximately Seven Hundred and Nineteen Thousand, Eight Hundred and Sixty Dollars (\$719,860). Warehouse sales for the same period amounted to approximately Eight Hundred Seventy Three Thousand, Nine Hundred and Sixty-eight Dollars (\$873,968). Approximately Two Hundred and Eighty-five Thousand Dollars (\$285,000) of the purchases, constituting roughly forty per cent (40%) of them, necessitated shipments to the warehouse from points

located outside of the State of California. Approximately Two Hundred and Twenty-three Thousand, Three Hundred and Ninety-one Dollars (\$223,391) of the sales, constituting roughly twenty-five per cent (25%) of them, necessitated shipments from the warehouse to points located outside of the State of California.

5. During the calendar year January 1 through December 31, 1940, Respondent made purchases for the Hill Street store totaling Eighty-eight Thousand, Seven Hundred and Thirty-nine Dollars (\$88,739). The sales from this establishment for the same period totaled One Hundred Fifty-eight Thousand, Three Hundred and Ninety-three Dollars and Fifty Cents (\$158,393.50). Approximately Four Thousand, Two Hundred and Seventy-three Dollars and Sixty-five Cents (\$4,273.65) of the purchases, constituting roughly five per cent (5%) of them, necessitated shipments to the Hill Street store from points located outside of the State of California. Approximately Three Thousand, Eight Hundred and Ten Dollars and Sixty-seven Cents (\$3,810.67) of the sales, constituting roughly two per cent (2%) of them, necessitated shipments from the Hill Street store to points located outside of the State of California.

6. Where the figures and percentages set forth in the foregoing paragraphs conflict with those set forth in the Stipulation between Respondent and the National Labor Relations Board previously admitted in evidence on April 24, 1941, in the

hearing heretofore held in these proceedings as Board Exhibit No. 2, the figures in this Stipulation shall be deemed to be the correct figures and shall be taken to correct those in the aforementioned Board Exhibit No. 2.

7. This Stipulation is to be marked as Trial Examiner's Exhibit No. 1 by the official reporter of these proceedings and shall then become a part of the official record of these proceedings.

Dated, this 13th day of June, 1941.

GERMAIN SEED AND PLANT  
COMPANY,

By LATHAM & WATKINS,

By PAUL R. WATKINS,

Its Attorneys.

NATIONAL LABOR RELATIONS  
BOARD,

By JAMES A. COBEY,

Its Attorney.

[Title of Board and Cause.]

EXCEPTIONS OF THE GERMAIN SEED AND  
PLANT COMPANY TO RULINGS OF THE  
TRIAL EXAMINER AND TO THE INTER-  
MEDIATE REPORT

The Germain Seed and Plant Company saving and reserving the right to file any further objections and exceptions it desires, hereby makes the following statement of exceptions upon which it will rely in connection with the consideration of the record and the Intermediate Report heretofore made and filed herein.

As to the Record

(1) Respondent excepts to the Trial Examiner's ruling on respondent's motion to dismiss the complaint (Board's 1-M) in that the Trial Examiner by his Ruling of April 24, 1941 erred in denying said motion to the extent said motion was based on the claim that the third amended charge is not in accordance with the Rules and Regulations.

(2) Respondent excepts to the ruling of the Trial Examiner on respondent's motion for a bill of particulars (Board's 1-N) in that the Trial Examiner by his Ruling of April 24, 1941 erred in denying said motion with the exception of items 11 and 12 of said motion.

(3) Respondent excepts to the ruling of the Trial Examiner on respondent's motion to strike (Board's 1-L) in that the Trial Examiner by his

Ruling of April 24, 1941 erred in denying said motion with the exception of items 4 and 5 of said motion, and

(4) Respondent excepts to the ruling of the Trial Examiner in support of his ruling sustaining items 11 and 12 of respondent's motion for a bill of particulars (Board's 1-HO in that the Trial Examiner erred in not requiring the Board to strike from paragraph 6 of the complaint (Board's 1-F) the following:

“. . . by uttering remarks disparaging to said Union and by committing other acts of substantially similar nature and import.”

#### Intermediate Report

Respondent excepts to the Intermediate Report of the Trial Examiner on file herein with respect to the findings, conclusions and recommendations covering the charge of violation of Section 8 (1) and Section 8 (2) of the National Labor Relations Act.

Generally, respondent excepts to the findings, conclusions and recommendations with respect to said matters on the following grounds:

- (1) They are contrary to the evidence;
- (2) They are not supported by any substantial evidence;
- (3) They are contrary to the spirit and intent of the National Labor Relations Act;
- (4) They are contrary to law;



(5) They are based upon conjecture, and upon unwarranted and unjustified assumptions;

(6) They are based upon inferential and uncertain testimony by witnesses of very doubtful credibility despite the presence of direct positive testimony to the contrary by highly credible witnesses.

(7) They entirely overlook the fact that there is not one iota of evidence that any one of the executive officers of respondent or any one of the foremen of respondent had a single thing to do with the formation of Consolidated Seedsmen's Union, Inc. (hereinafter referred to as "Consolidated").

#### Organization of Consolidated

In addition to the foregoing general exceptions respondent excepts as follows to the specific findings and conclusions of the Trial Examiner:

Exception (1) On Page 3, Lines 42-3 the Examiner, in referring to Consolidated, finds:

"Its membership is restricted to employees and former employees of the respondent."

This finding is directly contrary to both documentary and oral evidence. As an example take the testimony of the Board's own star witness, Hulphers, who testified on this as follows:

"The Witness: We permitted people who were employees of other seed companies, who wished to affiliate with us for bargaining pur-



poses for the union's benefit, to belong to the Consolidated Seedsmen's Union." (Tr. 173-4)

The sixth provision of Consolidated's Articles of Incorporation provides:

"Sixth. Units of this corporation, to be known as Locals, may be established at such times and places as may be authorized by the Board of Directors." (Board's Exhibit 4-A)

This finding is certainly reflected by this evidence as well as by the testimony of Luck that Consolidated actually negotiated with the employees of several other firms about coming into Consolidated. (Tr. 447)

Exception (2) On Page 4, Lines 8-10, the Examiner finds that Sage was:

". . . an executive of the respondent and that he represented the management in the activities hereinafter detailed."

This finding is wholly unsupported by the evidence. Both Sage and Meyberg, the President of the company, testified as to the duties of Sage. Sage testified that:

"(I had charge of the purchases only in) the department handling insecticides and spray pumps and miscellaneous items like that, I guess you would call it a sundries department." (Tr. 16-17)

Meyberg testified:

“He is a purchasing agent; buys sundries and certain articles connected with a definite department down there.” (Tr. 566)

Certainly there is nothing in Sage’s job as purchasing agent for one of several departments which would justify classifying him as an “executive” or “supervisor” of respondent, nor does the fact that he was present at the meeting of the so-called “department managers” furnish any basis for classifying him as an “executive” or “supervisor”. He has no jurisdiction of any character over any of the employees.

Still more important, the finding “that he represented management in the activities hereinafter detailed” is without any evidentiary support whatever. By the uncontradicted testimony of Sage, it was the employees themselves that induced him to bring them together. (Tr. 38) Many of them had repeatedly talked to him about the activities of union organizers in the plant and had told him that they thought that maybe the employees themselves should organize, and that they thought they might like to have an employee organization like the former Germain Improvement Association. (Tr. 17, 18, 25) This fact is amply supported by the statements attributed by the Examiner to Sage at the first meeting where Sage explained to the employees that a number of them had come to him regarding this matter and they had expressed a desire that they

have a union of some kind. (Rep. P. 4, L. 41-45) The only possible evidence which, by any stretch of the imagination, could support a finding that in carrying on his activities Sage was acting on behalf of the management would be a possible inference from the testimony of Hulphers that about the time of the first meeting there was a meeting of department heads, of which Sage was one. As to the nature of the meeting Hulphers testified he could get no information. (Tr. 122-123) Any inference that might possibly be drawn from this testimony is clearly rebutted by the positive testimony of Mr. Meyberg that at no time during this period did he hold a meeting of the department heads to discuss any union or the organizing activities that were then going on around the plant (Tr. 569) and by the direct testimony of Sage.

“Q. (By Mr. Watkins) Mr. Sage, directing your attention to the meeting held in the warehouse at the Germain plant on or about August, 1937, that is, the first meeting that was held there prior to the time that Mr. Voorhees was brought in, I want to ask whether or not you at that time or subsequently received any instructions or suggestions from anyone connected with the management of the company with regard to the holding of that meeting?

“A. No sir.

“Q. Did you at any time receive any instructions or suggestions from anyone con-

nected with the management concerning the formation of an independent union?

“A. No sir.

“Q. Or the desirability of an independent union?

“A. No sir.” (Tr. 564).

Exception (3) In footnote 4, Page 4, Lines 56-58, the Examiner concludes:

“That Sage exercised no supervisory authority over other employees in no way alters the fact that his executive position identified him with the management.”

This negative conclusion of the Examiner is very clearly based upon his assumption of facts which are contrary to the evidence. There is no evidence to support his finding that Sage was an executive and there is no evidence to support any finding that Sage was identified with the management. Accordingly, the only importance of the fact that Sage exercised no supervisory authority over other employees is its confirmation of the fact that Sage was not an executive. Stripped of this erroneous assumption this footnote has no significance whatever.

Exception (4) On Page 4, Lines 12-15, the Examiner seems to make something of the fact that Sage could only recall the names of Nesbit and Hatfield of those employees who discussed the union problem with him prior to the first meeting.

The inference from this point being made by the Examiner certainly is unwarranted. This matter occurred almost four years prior to the time of Sage's testimony. The respondent should not be penalized because this entire case was not brought before the Board while the facts were fresh in the minds of the witnesses.

Exception (5) On Page 4, Lines 27-28, the Examiner notes:

“Also present were Hatfield, Nesbit, Hook and Luck, all as found below representatives of the management.”

We except to this statement referring to these four men as representatives of the management. In dealing with a subsequent part of the report we shall go into detail regarding the status of each of these four men. (See Exception 16) However, at this point we except to the general statement that they were representatives of the management. Furthermore, at this point we wish to point out that the manner in which the Examiner has set forth this case illustrates its weakness. He first assumes that these parties are representative of the management and then he builds up his case on that hypothesis. Subsequently, after having presented his case he attempts to justify his original hypothesis. Such a procedure obviously shows the weakness of the Board's whole case.

Exception (6) On Page 4, Lines 30-36, the Examiner finds that Sage went to see Mr. Stratton of



Cudahy Packing Company regarding an independent union functioning at Cudahy's Plant and "for the purpose of obtaining more information about it" and also that Mr. Stratton referred Mr. Sage to Voorhees as an attorney familiar with the organizing of independent unions.

These findings so far as they go are correct. However, they ignore one most important point, and that is that the employees had, many years before, an association among themselves to which any employee could belong. Certainly it was obvious to anyone in 1937 that in view of the then recent and much discussed but little understood Federal Legislation regarding labor unions that the men would make inquiry as to what they might do.

Exception (7) On Page 4, Line 38, the Examiner finds with respect to the first meeting that "Sage presided at the meeting and was the only speaker."

If this statement is meant to imply that no one else at the meeting had anything to say, it is clearly erroneous. There is ample testimony that the meeting was in the nature of a general discussion with the employees taking part. (Sage, Tr. 25; Kadous, Tr. 90; Hulphers, Tr. 120; Yoakum, Tr. 236; Luck, Tr. 412, 448)

Exception (8) On Page 5, Lines 1 through 8, the Examiner finds that:

"Sage made additional statements attributed to him by witnesses Hulphers, Yoakum, and Freeman, all employees of the respondent to



the following effect: That they were all one happy family and wanted to be sure that what they did was right; that they shouldn't do anything which might endanger their jobs; that the respondent would prefer a 'house union' to an outside union and that Meyberg and Schoenfeld (president and vice-president of the respondent) had plenty of money and could close the plant down at any time."

This finding is based upon a fiction of the imagination of three employees, now ardent A. F. of L. members, who testified inconsistently regarding the alleged statements of Sage, and it is made notwithstanding positive testimony to the contrary by highly credible witnesses. The only credible testimony in the record with regard to this matter is directly contrary to the finding.

(a) Sage to whom these statements are attributed is a man of 22 years' experience with respondent and beyond question a man of high caliber testified as follows with respect to these alleged statements:

"Q. Do you recall whether or not you made any mention of the names of Mr. Meyberg and Mr. Schoenfeld at that meeting?"

A. No. Their names were never mentioned." (Tr. 26)

When called as respondent's witness:

"Q. Mr. Sage, at that meeting that I have just mentioned, did you make any statement to

the effect that the Germain Seed Company, because of the financial condition or otherwise of Mr. Schoenfeld and Mr. Meyberg, was in a position to close up the plant?"

"A. No, sir."

"Q. Are you positive of that?"

"A. I am positive of that." (Tr. 564-5)

(b) The Board's own witnesses, Kadous (and he was discharged by respondent some months ago and certainly wouldn't be biased in its favor) recalled with regard to that first meeting:

"Well, I remember that we had a meeting on the shipping floor amongst the employees. There were mostly men present and Mr. Sage addressing the group and he asked—spoke in regard to forming a union and he brought up, well, the organization that he used to have there; and he thought it would be a very fine thing if we could form something of that order at this time and as far as I could see, most of them agreed with him." (Tr. 90).

Now, if Sage actually made the statements which have been attributed to him, it seems without doubt that these statements would have made a very strong impression upon the rest of the employees. Nevertheless, Kadous was able to recall the statements of Mr. Sage regarding the former employees' organization, etc., but he did not recall any such statements as those which are here attributed to Sage.

The only explanation can be that Sage never made such statements.

(c) Similarly, the Board's witness, Luck, did not recall any such statements by Sage as are here attributed to him. Not even by suggesting and leading questions could Board's counsel recall such statements to Mr. Luck's mind.

Now looking at the testimony upon which the Examiner bases his finding, the following facts are pertinent:

(a) The testimony of Hulphers which the Examiner so wholeheartedly accepts purported to be very accurate quotations of the statements which Sage had made at an *impromptu* general meeting almost four years prior to the testimony of Hulphers. It is interesting to note how uncannily accurate Mr. Hulpher's memory was on those things which were favorable to the Board and unfavorable to the respondent. For example, Hulphers, at that time the freight elevator boy, who had been working with the company for only a few months, testified positively as to the presence of Messrs. Sage, Hill, Gates, Hook, Luck, Nesbit, and Hatfield. He also set forth with uncanny detail the facts of this meeting; that Mr. Sage told them to take seats around; that they took seats around on the different platforms and piles of grass; that Mr. Sage stood on a small platform for loading and storage of sacks; etc. (Tr. 118-20). However, in contrast to this uncannily accurate

memory on these matters, Hulphers was not at all sure what day of the week the meeting was held, nor what time of the day the meeting was held, nor whether there were or were not women present. (Tr. 118).

This flexible memory of Hulphers can be readily attributed to his admitted bias against Consolidated. Hulphers himself testified

“Q. When was the first time that you thought that the Consolidated Seedsmen’s Union was dominated by the company?”

“A. Since its beginning.”

“Q. You thought it right at the start?”

“A. Yes, sir.” (Tr. 183).

Referring to the Hill Street meeting, he testified:

“Q. Then I believe you testified you did not attend the meeting. Is that correct?”

“A. That’s right.”

“Q. Why not?”

“A. Because I was against organizing a house union.”

“Q. And that is the reason you didn’t attend it?”

“A. That’s right.”

“Q. In other words, you have been against this from the start practically?”

“A. From the start I was against it because I thought it was started by the company. And I said ‘Being we had the union

started at all, let's go in there and try to make some of the Consolidated Seedsmen's Union give them a start and maybe this way we will get a wage increase, being the vote went that way. We would go—we would have anyone in the union as long as we could get enough money to live on, a monthly wage, so we could satisfactorily live on it.'” (Tr. 191-2).

In 1940, Hulphers at a Consolidated meeting asked for a secret ballot on disbanding the union. One example of the “accuracy” of Hulpher's detail testimony is his testimony that he got the results of the 1937 election on the afternoon of the day on which the election was held. (Tr. 135). However, Kadous, one of the tally clerks testified as follows on this:

“Q. I think in regard to this election you testified the ballot boxes were left one day and the employees given the opportunity to vote, and they were picked up and counted the next. Is that correct?”

“A. Yes.” (Tr. 111).

How can the testimony of this witness be given any credibility whatsoever. His Charlie McCarthy recitation of precise “facts” damaging to the respondent and Consolidated were in such sharp contrast to his hesitating, head scratching testimony on matters he hadn't memorized that no unbiased person would give any



credit to his testimony. On top of this, the record shows beyond question by his own admissions that he has been prejudiced and biased against Consolidated from the very beginning.

(b) As far as gaining any support for this finding from the testimony of Yoakum, the very most that the Examiner could rely on was a conjecture. Yoakum, who at that time had been employed a few months doing general labor, when asked about the statements of Mr. Sage at the meeting, recollected directly statements of Mr. Sage such as the fact that there were a number of independent unions in the City which Mr. Sage understood were doing nicely and that he, Mr. Sage, felt that it would be a good thing if Germain employees did something along that line, and then testified:

“Then that is kind of the way it went. So I think that he did mention the fact that if we joined an outside union why the company also had plenty of money and they could close the doors down, and in order to keep the place going, maybe we had better, you know, have an independent union.” (Tr. 236).

Yoakum did not even recollect this until the matter was suggested by a leading question which put the words in his mouth.

(c) The testimony of Freeman (Tr. 276) upon which the Examiner relies does not in any way support the finding that the respondent

would prefer a house union to an outside union. Furthermore, the lack of credibility of this witness is well illustrated by the manner in which he paused before answering the questions of counsel for respondent during the cross-examination. While he was able to remember quite promptly and specifically the exact statements of Mr. Sage back in September, 1937, he was unable to remember the facts surrounding his joining the A. F. of L. as late as September, 1940. In fact he didn't even remember if he had discussed in September, 1940 his joining the A. F. of L. with the other employees (Tr. 286). In fact he paused so long after that question was asked that the matter was even noted by the Examiner. (Tr. 287-289).

Sage, to whom these purported statements are attributed testified unhesitatingly that he did not mention either the name of Meyberg or Schoenfeld at this meeting. Other of the Board's witnesses who recalled the circumstances of this matter and some of the things that went on there did not recall any such statements by Sage. Contrasted with this, we have the testimony of Hulphers, whose memory was flexible and whose testimony on other matters was contrary to much more reliable testimony, and whose extreme bias was admitted by Hulphers himself, and of Yoakum whose testimony was at most conjecture, and who could not even recall the statements on cross-examination until they were sug-

gested to him by leading questions, and Freeman whose entire testimony shows that he was primed to testify to these statements even though he didn't remember facts which had occurred seven months before the hearing. Yet the Examiner accepts the testimony of Hulphers, Yoakum and Freeman, disregards all other testimony, and brands Sage a liar. Such a finding as this one is, it is submitted, clearly erroneous and without any substantial evidentiary support.

But even though we assume that Sage said everything attributed to him by the charging union's little helpers, it is all immaterial unless Sage was actually an executive or received instructions from the management as to his statements.

Exception (9) On Page 5, Lines 10-11 the Examiner finds that Sage "held" a second meeting of the employees. Here the Examiner is confusing "held" with "arranged". It is true that Sage arranged for the meeting but it was held only in response to the request of the employees. This is shown by the testimony of Sage that:

" . . . So before the meeting was over they decided that they would like to have me bring someone in to organize them and incorporate them and asked if I could suggest someone, some legal man, to do that." (Tr. 24)

Exception (10) On Page 5, Lines 16-19, the Examiner finds, with respect to Voorhees at the second meeting in the early fall of 1937 that:

“He also informed them that employees having the right to hire, discharge or discipline or occupying executive positions could not belong to a union. Hill raised a question about his right to be present and was told that both he and Gates should leave.”

As thus stated, this finding suggests an inference which is contrary to the record. Hill asked about his status and then Voorhees made his statement as to certain types of employees being ineligible for union membership. He did not make a general statement of this effect to the group just out of thin air, but rather he made the statement in direct response to the inquiry of Hill's. This is pointed out by the testimony of Sage:

The Witness:

“Yes, sir. I believe it was Mr. Hill asked a question of Mr. Voorhees regarding his—the line of work he was doing there, and Mr. Voorhees answered the question and told he and Mr. Gates both that they should not be present at that meeting, and as I remember it they both walked out of the meeting right then and there.” (Tr. 30).

Exception (11) On Page 3, Lines 24-26, the Examiner referring to the second meeting finds:

“It was also suggested at this meeting that an election be held to determine the wishes of the employees before organization of an independent union was undertaken.”

To the extent that this finding implies that some persons contemplated formation of an independent union regardless of the outcome of an election it is contrary to the record and is just another example of the Examiner's reliance on his own imagination in order to support the Board's charges of company domination. The testimony of the Board's witnesses Kadous and Luck clearly refute any such inference. Kadous testified:

“Q. Now going back to this election that was held some time between the Voorhees meeting at the plant and the Voorhees meeting at the Hill Street store who suggested that such an election be held?”

“A. Well, the majority of the employees working there suggested that we had to have some kind of an election and we decided that was the way to have it. To come to the proper conclusion as to which union we was to have.” (Tr. 108-9)

“Q. In other words, there seems to be the choice between voting for a union or voting to have another talk by Mr. Meyberg. Do you remember any discussion of anything of that kind at the meeting?”

“A. Yes, I remember that *some of the fellows were undecided as to what to do*. They thought that the company—in fact I wouldn't say Mr. Meyberg—that the company in fact would give us what we wanted without forming



a union of any kind, and that was the idea of some of the employees that we approach Mr. Meyberg *before going into any union* and his talk was more or less along that line.” (Italics ours) (Tr. 114).

Luck testified:

“Q. In other words, how were you informed that an election was going to be held?”

“A. Well, there was constant talk all through the organization about this, and some of the fellows wanted to join the C. I. O. and some wanted to join the A. F. of L. Some of them were in favor of the independent union and some of them didn't just exactly know the circumstances or conditions of any of them, and thought they ought to have a little more knowledge of the thing and maybe Mr. Meyberg could explain it. Tell what it was all about.” (Tr. 413).

The Examiner failed to note that the employees DID NOT TALK to Mr. Meyberg. This certainly would have been the case, following such a suggestion, had the meeting been company controlled or dominated.

Exception (12) On Page 5, Lines 31-32, the Examiner finds that “the source and authorship of the ballots is not established by the record.”

True, this is not established by the record, but the only normal inference would be that Voorhees

prepared it. The Board, knowing this would be an issue could easily have asked Voorhees about this, but it did not do so.

Exception (13) On Page 5, Lines 49-50, the Examiner refers to Clark, Frauenberger, Luck and Hook as follows:

“all found herein to be representatives of management”

We except generally to this absurd finding and in dealing with a subsequent part of the report we will discuss this finding with respect to the individuals named. (See Exception 16, *infra*.)

Exception (14) On Page 5, Lines 46-48, the Examiner finds that:

“A pre-organizational committee was then created, composed of employees from the various departments. None of the witnesses including members of the committee was able to explain how the committee was chosen.”

By this statement the Examiner seeks to infer that the committee was chosen by the management or someone on their behalf. The circumstances clearly refute any such an inference. The reasonable inference would be that the group of employees just informally agreed upon this group to get things started. These individuals who formed the committee and circulated the petitions had no difficulty in getting the signatures of a large majority of the employees. (Board's Exhibit 3). On top of that and of still greater significance is the fact that at the

first general meeting of Consolidated on September 14, 1937 of the seven members of the pre-organization committee (see Board's Exhibit 3), three were elected by the employees to be assemblymen and two others were elected by the employees to be department representatives (Board's Exhibit 17-C). This pretty clearly shows that this committee was truly an employee committee and rebuts the inuendo of the Examiner's finding.

Exception (15) On Page 6, Lines 4-5, the Examiner finds that the circulation of the pre-organization petitions and the collection of initiation fees:

“were carried on during working hours about September 1, 1937.”

The only testimony respondent could uncover in the record supporting the finding that solicitation for Consolidated memberships was carried on in the plant on company time is the testimony of Hulphers. (Tr. 150-151). On the other hand, Hulphers himself testified that he signed his application for membership in Consolidated during a noon hour. (Tr. 139). Further, the following evidence would seem to indicate pretty clearly that no such solicitation occurred:

Yoakum testified:

“Q. Have you or have you not personally observed at any time any solicitation for membership in the Consolidated Seedsmen's Union?”

“A. No, sir.” (Tr. 242).

Freeman testified:

“Q. All right, have you ever at any time observed any solicitation for membership for the Consolidated Seedsmen’s Union?”

“A. I don’t.”

“Q. You have never observed any?”

“A. No.” (Tr. 280).

Frauenberger who circulated one of the petitions testified that he did so on his own time during his vacation and that he contacted the men outside the plant. (Tr. 304).

In the light of such evidence, it is rather difficult to see how the Examiner could find that any solicitation for Consolidated was carried on in the plant during working hours; but most important is the fact that there is no evidence that the pre-organization petitions were solicited in the plant on company time, and such a finding is the product of the creative mind of this Examiner who is grasping at straws to support his biased viewpoint.

Exception (16) On Pages 6 and 7, the Examiner makes a number of findings as to the duties of several individual employees and also a finding as to their status. Respondent excepts in general to these findings and will discuss the findings regarding the duties of these employees individually. Thereafter, respondent will discuss the findings of the Examiner as to the status of the individual employees.

Fraunberger

With respect to Fraunberger, the Examiner found that:

“He was charged with the duty of relaying Hill’s orders to the truck drivers, distributing work to them and directing their work, routing the trucks, checking out the loads, helping load the trucks and attending to complaints concerning deliveries.”

The first part of this finding:

“He was charged with the duty of relaying Hill’s orders to the truck drivers”

is a correct statement of a function performed by Mr. Fraunberger. However, the additional statement that:

“He was charged with \* \* \* distributing work to them and directing their work”

is contrary to fact and is not supported by the record. This statement coming after the previous statement that he relayed orders to the truck drivers infers that in addition to relaying orders to the truck drivers he otherwise distributed work to them. This is contrary to fact and has absolutely no support in the record. The statement that he directed their work is absolutely unfounded. The statement that he routed the trucks directly contradicts the testimony of Mr. Fraunberger himself and has no support whatever in the record. Fraunberger testified with respect to his duties as follows:



“Q. Can you tell us what you did at that time?”

“A. Check the loads out and help the boys load, attended to the air tubes and the complaint calls and things of that sort.”

“Q. Did you act as dispatcher at all for the trucks?”

“A. Well, on order of Mr. Hill.”

“Q. On order of Mr. Hill?”

“A. In other words, we had a group of orders every morning that were for the boys to handle,—”

“Q. I see.”

“A. —and it was on his orders.”

“Q. In other words, as I understand it, the trucks were routed by Mr. Hill. Is that right?”

“A. No. There was no specific routes at all to follow. It was just as the work came in for the day, they had certain territories to cover, but the routes weren't exact—”

“Q. I see.”

“A. —on every trip, and a great many times the boys would route their own orders. In fact, that was the general practice.”

“Q. Would you relay Mr. Hill's orders to the truck drivers?”

“A. Generally speaking, yes. There was the orders for the day and there was an amount of work to be done; and everybody knew the amount of work that was to be done. In other

words, they tried to load the trucks as soon as possible and get them out, so the boys would have plenty of time to finish their work in the day time. It was work that everybody knew the general procedure." (Tr. 293-4.)

The record is devoid of evidence to support a finding that Fraunberger distributed work to the truck drivers, other than merely relaying Hill's orders to the drivers, or that Fraunberger in any other way directed their work. The contention of respondent that this finding is erroneous is further shown by the testimony of Fraunberger regarding the conduct of the work in the absence of Hill:

"Q. Now, when Mr. Hill is sick, or for any other reason he is absent, who has charge of that shipping department?"

"A. No special one. There is a certain amount of work that has to be done and, well, it travels along just by itself, you might as well say, because most of the employees there have been there a great many years and they know their different positions without being coached every minute of the day or every day."

. . .  
"Q. When he is absent, is there anyone responsible for the truck drivers besides yourself?"

"A. By the word 'responsible,' what do you mean, Mr. Cobey?"

"Q. I mean, in other words, these truck

drivers coming in and out, certain orders are being given to them, aren't there?"

"A. That is still the natural procedure of the day's work. In other words, there are pick-ups that come in from the different buyers, and the package department will need that, and if you have an empty truck, you don't run to Mr. Meyberg or Mr. Hill. You know that work has to be done. It is just automatic work that comes through."

"Q. Now, the planning Mr. Meyberg does, as I understand, when he is absent, who does that?"

"A. Generally speaking, the drivers themselves have done it themselves. In other words, there may arise a question that a stop will be off a territory, and he lets,—the stop, rather, is given to another truck driver. And that is the morning's argument and getting ready for the day's work."

"Q. Are those things referred to you?"

"A. Not necessarily. Sometimes they have been, but that has been just the natural procedure. The same question might arise between drivers. They may say, 'You are going over to the southwest. How about taking this with you?' " Tr. 295-6).

The only possible evidence that could support a contention that Fraunberger routed the trucks is the statement by Kadous that

"he routed all the bills for the truck drivers."

This statement was made by Kadous along with a number of other general statements as to Mr. Frauenberger's duties, the crucial portion of which testimony by Kadous was stricken out on motion of counsel. Frauenberger had no power to hire or fire any employee, nor did he have the power to recommend hiring or firing; this by the uncontradicted testimony of both Frauenberger and Meyberg.

The uncontradicted testimony of Meyberg clearly shows that Frauenberger had no power to hire, fire or discipline any employee. Referring to the duties of Frauenberger, Meyberg testified as follows:

"Q. What about Mr. Frauenberger? At that time he was a shipping clerk—that is prior to the last position that he had. What about his position at that time?"

"A. He had charge of deliveries."

"Q. City shipping rather?"

"A. City shipping, yes. He had no rights in connection with labor in any instance."

"Q. He doesn't hire or fire?"

"A. No."

"Q. Or didn't have the power to hire or fire?"

"A. No."

"Q. Or to recommend hiring or firing?"

"A. No." (Tr. 566-7).

The Examiner can't "wish" Frauenberger into a supervisory status where in fact he had no such position. Watson, who succeeded Fraunberger and took over his identical duties (Tr. 567) was an A. F. of L. member (Tr. 376) but apparently, in the Examiner's mind, that removed HIS supervisory status. Consistency, even in a trial of this character, retains some virtue!

Nesbit

The Examiner finds that:

"Nesbit denied that he was in charge of this floor but explained that 'my idea of being in charge is being in charge . . . so as to hire and fire.' The testimony of Yoakum, Loy and Hulphers, credited by the undersigned, establishes that Nesbit directs the work of the other employees on the fourth floor."

Any inference that the Examiner might be attempting to present from his quotation of Nesbit's testimony is clearly refuted by other portions of Nesbit's testimony such as:

"Q. Who assigns the work to the men on the fourth floor?"

"A. Well, there is really no one that assigns the work. That is, the daily orders—they come in and the men that works there know what it is and they have to go out and then tell them to make deliveries and what work is to be done." (Tr. 370-1).



“Q. Have you ever made any comments upon the work performed by the men working with you to Mr. Gates or Mr. Hill?”

“A. No. Only when I have been asked when they come to me and ask me if—which man has been there longer, then I can tell them because I know, but of course that record is in the office, they can find out.”

“Q. In connection with layoffs, do they ever come to you and ask you about which man should be laid off?”

“A. No, sir.”

“Q. They don’t?”

“A. Only like I said. If one man has seniority.”

“Q. Nobody has ever asked you as to the quality of the work done by the other men up there on the fourth floor?”

“A. No, sir.” (Tr. 371-2).

The Examiner refers to testimony of Yoakum, Loy and Hulphers which he credits as establishing that Nesbit directs the work of the other employees on the 4th floor. Yoakum who by his own testimony had worked on the same floor as Nesbit for only about a month prior to the hearing (Tr. 231) testified as follows:

“Q. Are your assignments of work given by Mr. Nesbit?”

“A. Yes, sir.” (Tr. 232).

Trial Examiner Paradise: "When you say that you take orders from him, what sort of orders do you take?"

The Witness:

"Well, if there is something in stock he wants piled or some order he wants packed, then I pack it." (Tr. 233).

Loy who had worked for respondent and on the same floor as Nesbit for only a few months in 1940 (Tr. 541) testified as follows:

"Q. Under whose supervision did you work?"

"A. Mr. Nesbit."

"Q. Who gave you your assignments of work?"

"A. Mr. Nesbit." (Tr. 542).

Here we have two employees working on the same floor as Nesbit both of whom were beginners. It was only natural that Nesbit having been on the floor longer than any others there should help these new men get into the swing of things and help them learn all there was to be done on that floor. To say that this testimony of these beginners establishes that Nesbit directed the work of the other employees on the 4th floor certainly is ridiculous. As to the alleged testimony of Hulphers, anyone who can read can see from the record that there is no such testimony.

Even though we take the testimony of Yoakum and Loy as gospel it would only make Nesbit a

gang leader. There isn't any union in the country which wouldn't admit him to membership and the Board knows it.

### Luck

The Examiner found that Luck supervised and inspected the work of the other employees in the bulb department on the 3rd floor, and that he took care of the invoices and the buying.

Luck worked in the bulb department under the supervision of Pieters where Luck was, during the slack season, the sole employee, and where there were never over three or four employees. Pieters was in charge of this department. This then is the true picture: Luck does all the work in the bulb department during the slack season of the year; during the rush season two or three other employees are brought in to assist. Luck knows how the work should be done, whereas the seasonal employees may or may not be familiar with the work; and when Luck sees that the work is not being gotten out as it should be, he refers this problem to the boss, Pieters, who takes care of the matter. In such circumstances it is ridiculous to call Luck a supervisory employee.

The record does not support the finding that Luck "supervises" the work of the other employees on this floor during the rush season or that he "inspects" the work of the other employees on this floor during the rush season. Likewise, the record does not support the finding that he was taking care of the invoices and the buying.

Hook

The Examiner finds that:

“Hook testified (referring to the additional employees in the milling department and to the ‘bull gang’) . . . that he is responsible for the proper performance of their work and that he guides and instructs them in their work, and that ‘if they don’t do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do.’ ”

Hook for a number of years has worked in the milling department where is at times the only employee. When seed comes in, Hook, who operates the mill, decides where the seed can be placed so as to be more convenient for the operation of the mills, and he tells the ‘bull gang’ who move the seed in to put it in the spot which he chooses. This fact is used by the Examiner as a basis for finding that Hook testified that he relayed the orders of Gates to the ‘bull gang’ and that he was responsible for the proper performance of the work of the ‘bull gang’ and that he guides and instructs the ‘bull gang’ in their work. How perfectly absurd these findings are when one reads the testimony of Hook which is as follows:

“Q. Have you had anything to do with the bull gang?

“A. Yes.”

“Q. Will you tell us what you had to do with the bull gang?”

“A. Well, as seed comes in, I got to have the seed where it can be handed to the mills and I go to Mr. Gates, the foreman, and he says to me ‘have it put wherever you want it’ and I put it in a likely spot where it can be got at for the mills.”

“Q. In other words, you tell the bull gang where to put it?”

“A. Yes. I don’t order them, I just ask them to do it.” (Tr. 327).

Hook did testify that he relayed orders of Gates to the additional seasonal employees in the milling department. His testimony regarding these orders was as follows:

“Q. What sort of orders?”

“A. Well, he gives me a sheet with the record of the seed, whether it is quarantine or nonquarantine seed, and I have to take this seed and clean it, get the noxious weeds or non-noxious weeds, whichever he wants out, and, I have to get this piled down and get it to them, get it to the mills. If I have no help, I have to do it myself. Sometimes it is heavy and sometimes it might run from two sacks to a thousand sacks, and naturally, I have to have help and I have to ask him for some help, and when I do that, he will tell me to get such and such a man working on five to help me. Naturally, he tells me which man it is, and sometimes I have to have them help me on the mills, but I regu-



late the speed and how fast they put it in, and all that.”

“Q. And do you tell Mr. Gates when you need additional men to work on your floor?”

“A. Yes, sir.”

“Q. You tell him you want to put a couple more men on the mills?”

“A. No, sir. I don’t tell him to put a couple more men on. He generally uses his own judgment, whether I need any more men. Sometimes I have to ask him. Sometimes the seed runs so fast and the machines are running so I have either to shut them down or ask for more help.”

“Q. I see. And when the work starts to fall off, do you make any recommendation to Mr. Gates about letting some people go?”

“A. No, sir.” (Tr. 334-5).

Hook being the only regular employee in the milling department feels a natural responsibility to see that the seasonal employees don’t destroy a lot of seed, and he testified that he was responsible for the seed and if it was run wrong. However, this is not at all a basis for finding that “he guides and instructs them in their work.” Furthermore, even if he does teach new employees the “tricks of the trade” that is wholly irrelevant on the question as to his status as a supervisory or nonsupervisory employee. As is established by the uncontradicted testimony of Meyberg, Hook has no power to hire or fire anyone, nor has he any power to recommend

the hiring or firing of anyone. (Tr. 566). It is admitted that he does manual work along with the seasonal employees in the milling department.

Hatfield

The Examiner finds that "he has one or more helpers as the work requires" and that "he directs and supervises the work of his helper or helpers and is responsible for the proper filling of seed orders." The first finding referred to is not correct. Hatfield testified as follows:

"Q. Fifth and sixth floors. Were any people working up there with you at that time?"

"A. Well, yes and no. I have a man when I have a need for him, otherwise I do it myself." (Tr. 361).

Correctly stated, Hatfield does all the work himself except when he has need for one helper, and he does not as the finding of the Examiner intimates have a helper there all the time. At no time has Hatfield reported to his superior Gates as to the quality of work that is done by his helper or helpers. (Tr. 366). Having a helper doesn't make an employee a supervisor. This really is a novel twist.

Before making his finding with respect to the status of these individual employees, the Examiner makes another finding regarding a request by Consolidated for "a better allotment and statement concerning sub-foremen and their positions." He finds that:

“on December 22, 1937 the Consolidated issued a notice to its members setting forth ‘agreements obtained’ from the respondent. One of the items claimed to have been agreed to was ‘a better allotment and statement concerning sub-foremen and their positions.’” (footnote 7).

However, the notice itself (Board’s exhibit 12-B) was a notice only to Division 3 and there is no evidence that any such notice was given to the members of Consolidated generally. Furthermore, the uncontradicted testimony of Hook was:

“We was never sub-foremen. We was never admitted to being foremen at all.” (Tr. 339).

and of Hatfield (Tr. 363) regarding Board’s Exhibit 12-B clearly refutes any inference from the findings of the Examiner that Consolidated and respondent came to any agreement as to the status of these individuals as sub-foremen. If they were already sub-foremen—though this would not make them ineligible—why did they make a request **TO BE MADE SUB-FOREMEN?**

#### Conclusions of Examiner as to Status of Individual Employees

The Examiner concluded that these five men “were working foremen with supervisory authority,” “that their interests were closely identified with those of the management,” and “that in assisting in the organization of Consolidated they (along

with others) appeared to be and were acting in furtherance of the wishes of the respondent as expressed by Sage." Any unbiased analysis of this group of findings and even a casual consideration of the evidence clearly demonstrates that they are Examiner created and out of whole cloth.

### Fraunberger

As we have shown above the finding that Fraunberger was charged with distributing work to the truck drivers and was directing the work and that he routed the trucks is absolutely without foundation. When it is recognized that this finding is erroneous, a finding that Fraunberger was a working foreman with supervisory authority is ridiculous.

Respondent is at a loss to understand what the Examiner uses as a basis for his finding that Fraunberger's interests were closely identified with those of the management. There certainly is no evidence to support any such finding, nor is there any evidence to support a finding that in his activity in the organization of Consolidated, he appeared to be or was acting in furtherance of the wishes of respondent.

Secondly, Fraunberger himself testified that prior to the second meeting he occupied no position whatsoever, excepting that of an onlooker. He testified:

"No. I wasn't associated with the management or of the meetings, the calling of the

meetings of the different groups, together at this time. I was just an onlooker.” (Tr. 301).

There certainly is not the flimsiest bit of evidence to tie in the acts of Frauenberger with the management of respondent.

### Nesbit

As we have pointed out above, the finding of the Examiner that Nesbit directs the work of other employees on the 4th floor is without support from the record. However, even if the evidence which the Examiner credited is acceptable, it should be noted that this testimony by Yoakum and Loy was related to the activities of Nesbit between February and October, 1940 and for the month just prior to the hearing. Certainly it cannot be contended that such evidence has any bearing upon his status in the fall of 1937. Even if one were to shut his eyes and accept the finding of the Examiner as to the duties of Nesbit, one cannot possibly accept the conclusion that such evidence supports a finding that he was a working foreman with supervisory authorities, whose interests were closely identified with those of the management, and who in assisting in the organization of Consolidated acted in furtherance of the wishes of respondent. This conclusion just like the conclusions with respect to these other individual employees is based upon the desire of the Trial Examiner and has no evidentiary support.



### Luck

In our discussions *supra* we have shown that the Examiner's finding that Luck supervised and inspected the work in the bulb department was without support from the record. Stripped of this finding, there is absolutely no basis for the conclusion by the Trial Examiner that Luck was a working foreman with supervisory authority; that his interests were closely identified with those of the management; and that in his activities in the organization of Consolidated he was acting in furtherance of the wishes of respondent.

### Hook

Little need be said to refute the Examiner's conclusion as to the status of Hook. In the first place, none of the findings with regard to Hook's duties, even if accepted as true which they are not (see *supra*), would justify a conclusion that Hook was a supervisory employee, and of course here again as in the case of Fraunberger, Nesbit, Luck, and Hatfield, neither is there any evidence nor is there even any finding by this Examiner which would in any way support the conclusion that the interests of Hook or of these others were closely identified with the interests of the management, or that in their activities in the organization of Consolidated they carried out any wishes of the respondent, if the respondent had had any wishes at all in this matter. Furthermore, the fact that Hook in September of 1940 prepared a petition for wage increases which

petition was to be presented through Consolidated to the company (Tr. 346-8) is hardly consistent with a contention that the interests of Hook were identical with the interests of the management. In fact this petition called for a minimum wage of \$110.00 per month, and when compared with a contemporaneous petition requesting a 10% raise from minimums of \$65.00 and \$70.00 a month, it becomes readily apparent that Hook was not "contaminated" by any connection.

### Hatfield

The conclusions as to the status of Hatfield need hardly be mentioned. Here is a man who part of the time may have one helper and very rarely may have more than one helper, and even when he does have a helper, he has no authority to hire, fire, or discipline him; yet he is classified as a supervisory employee. Hatfield is now an A. F. of L. member though his work hasn't changed a bit.

Here it should further be noted that if these men were petitioning for a status of sub-foremen, it must be evident that they did not already have such positions. And furthermore, the fact that these requests were not granted is further evidence that these men were not considered as nor intended to be supervisors.

There are certain rules by which union eligibility of employees is judged. These have been set forth by the Board in innumerable R-cases. We defy the Examiner to point out one such case in which em-

employees such as these were ineligible to union membership. If they are eligible to union membership then they have the right to engage in union activities. There can be no other answer. Frankly, it is impossible to conceive of a more unwarranted finding than that of the Examiner that these employees were supervisors. Obviously the Examiner felt that in order to sustain the Board's case, he must find these five individuals to be supervisory employees. He did it but it certainly required some tongue-in-the-cheek evidentiary gymnastics. This is apparent to anyone who reads the record.

We respectfully submit that these conclusions as to the status of these employees are without any foundation whatever and are patently erroneous. Even accepting the findings of the Examiner as to the duties of these individual employees, his conclusions are erroneous, and as we have shown above his findings as to the duties of these individual employees are grossly in error in every material respect.

The statement that Hill and Gates took part in the organization of Consolidated on behalf of the management is, of course, clearly untrue.

#### Subsequent History of the Consolidated

Exception (17) On page 8, lines 9-10 the Examiner, after referring to a letter from Consolidated to respondent in which letter Consolidated referred to "making definite agreements", found that:

“It does not appear that anything further was done toward obtaining definite agreements.”

If by this finding the Examiner means to find that Consolidated did not thereafter obtain any definite agreements with respondent, the finding is in error. Luck directly testified that they did come to definite agreements with respondent and that while the agreements were not in writing, they were not signed by respondent

“with the understanding that there was no necessity of having them signed, that the agreement was an understanding and would be followed through as readily—the verbal understanding as well as a written one.” (Tr. 441).

It should be noted that when the Examiner referred to the written agreements, which Luck testified he had drawn up, as “agreements which the union requested and were not granted,” Luck hastened to state:

“I wouldn’t say the agreements weren’t granted. They weren’t granted in writing.” (Tr. 442).

Furthermore, as far as these “suggestions” are concerned, no written agreement embodying them was ever submitted to respondent. (Meyberg Tr. 573).

Exception (18) In Footnote 8, page 8, lines 58-61, the Examiner finds that:

“The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the President replied that this could not be done.”

This finding by showing only part of the picture evidences the same bias against respondent and Consolidated as so many of the other findings of this Examiner. The Examiner here tries to show that due to company domination the Union was unable to force the management to sign a contract. Respondent has already shown (Exception 17 supra) that the officers of Consolidated took the respondent's word to be as good as any signature. Now the “President” referred to in this finding who stated that Consolidated could not get a signed contract was Watson. (Board's Exhibit 13-A). This same Watson was the one whom the Board of Directors of Consolidated voted out of office on September 23, 1940 because of his A. F. of L. affiliation. (Board's Exhibit 22). It should be apparent to anyone that this statement of Watson's was a self-serving declaration made by one who had interests in a union other than Consolidated, and who had interests in disrupting Consolidated.

Exception (19) On page 8, lines 18-19, the Examiner referring to a “weenie roast” held by Consolidated on July 30, 1938 finds:



“Although the record does not show the precise nature of the respondent’s contribution on this occasion . . .”

Mr. Meyberg testified that respondent had given Consolidated some money to buy some ice cream on a picnic, loaned them a truck for a picnic, paid a traffic ticket for one of the boys that drove the truck, and gave some cigarettes as prizes in connection with a baseball game. (Tr. 568). This paragraph of the Report sets forth all the social activities in which respondent gave anything to Consolidated. From these very findings, it is quite evident that the “contribution on this occasion” was the furnishing of some ice cream by respondent for the picnic.

On this same matter, the Examiner also found (lines 22-24) :

“It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October, 1938.”

This finding inferring that the use of the warehouse was given free is not supported by any evidence and is contradicted by the testimony of Meyberg wherein he sets forth the property **OR OTHER THINGS OF VALUE** respondent gave or donated to Consolidated since its inception. (Tr. 568).

The Examiner’s emphasis on matters of this character clearly indicates his desperation in trying to make a case against respondent and Consolidated.

Did he forget that these things were done AFTER Consolidated was the bargaining agent? Does he have some ideological background which requires him to censure such a relationship between employer and employees?

Exception (20) On page 8, lines 26-31, the Examiner makes certain findings regarding the submission of lists of unemployed members and delinquent members to Meyberg and finds:

“Although Meyberg denied having requested lists of delinquent members, he admitted that he received such lists and stated that he used his own judgment in acting on them.”

If by the matter of his statement the Examiner means to infer that something else in the record indicates that Meyberg did request such lists, he is in error. There is nothing in the record which in any way refutes this denial of Meyberg's. Furthermore, all of this occurred after respondent had recognized Consolidated as the bargaining agent. Respondent recognized Consolidated as the bargaining agent on October 1, 1937 (Board's Exhibit 18-B). The first date definitely fixed upon which such a list was submitted to Meyberg is February, 1939 (Board's Exhibit 29-F), almost a year and a half after Consolidated had been recognized by respondent. Furthermore, these findings are misleading in failing to point out that Consolidated submitted to respondent a proposed agreement, em-

bodying this preferential hiring principle (Respondent's Exhibit 4), but that respondent neither signed such agreement nor orally agreed to it. Referring to this proposed agreement, Meyberg testified as follows:

(By Mr. Watkins)

"Q. I will ask you, Mr. Meyberg, whether or not the company ever agreed to this respondent's Exhibit 4 either in form or substance?"

"A. Absolutely not." (Tr. 576).

Exception (21) On page 8, lines 44-56 and page 9, lines 1-9, the Examiner makes certain findings regarding an alleged conversation between Thrift and Hill, and finds that Hill asked Thrift if he belonged to "the union" and that when Thrift replied in the affirmative, Hill stated to Thrift:

"Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A. F. of L. and the C. I. O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C. S. U. (Consolidated) as well, they are taking care of you here, whereas the dues you are paying into the A. F. of L. is doing you no good. We don't want the A. F. of L. in here or any other union."

and that Hill then asked Thrift if he could get a withdrawal card (from the A. F. of L.). He also

finds that at that time Thrift's job was in jeopardy.

Frankly, respondent is surprised that even the Examiner should give credit to the testimony of this witness. Regarding this very conversation, Thrift on cross-examination contradicted himself. On direct examination, he testified as follows:

"A. I told him then that I belonged to the A. F. of L., in fact, I had joined some four months previous to my employment there.

"And he says, 'Well, that makes it sort of bad, Jack, because I intended to keep you on here.' And he said, 'Now, I don't know what to do about it.'

"And then he said 'Well,' he said, 'this is, to my notion, the A. F. of L. and the C. I. O., *all these unions*, are a bunch of leeches,' he said, they feed off of the——" (Italics ours.) (Tr. 492-3).

However on cross-examination, he testified as follows:

The Witness:

"He says, '*This union* is a bunch of leeches who feed off of the efforts of others.'"

(By Mr. Watkins)

"Q. Did he say which union he was talking about?"

"A. No."

"Q. He just said '*this union*'?"

"A. Yes."

(By Mr. Watkins)

“Q. Did he or did he not mention any specific union?”

“A. No, he didn't say ‘A. F. of L.,’ or nothing. He just said, ‘this union’.”

“Q. All right. What was said after that?”

“A. Well, after that he said that—oh, he said that—he said, ‘What you are doing is paying dues into the A. F. of L.’ That is when he mentioned the A. F. of L.”

“Q. This is the first time he mentioned the A. F. of L.?”

“A. Yes. He says, ‘What you are doing is paying dues into the A. F. of L., which is doing you no good at this time, and the dues that you are paying into the Consolidated Seedsmen's Union are the ones that are helping you out.’”

“Q. Did he say during this conversation that that was the first time that he had known that you were an A. F. of L.?”

“A. No.” (Italics ours.) (Tr. 513-514).

The alleged statement of Hill:

“Well, that makes it sort of bad, Jack, because I intended to keep you on here . . . now

I don't know what to do about it.” (Tr. 493). clearly implies that this was the first knowledge by Hill that Thrift belonged to the A. F. of L. This is hardly consistent with the fact that Thrift had at that time been wearing his A. F. of L.



button for over a month, or with the testimony of Thrift himself that Hill had seen his A. F. of L. button. (Tr. 515).

Another instance in Thrift's testimony which well illustrates his lack of credibility is his testimony that he had not discussed his pending layoff with Consolidated. (Tr. 516, 519-21). The "stumbling" testimony of Thrift on redirect examination should be noted. He testified as follows:

"Q. (By Mr. Cobey) Now, Mr. Thrift, I think you testified in response to Mr. Watkins' questions, that, to your knowledge, you never took up the matter of your possibility of your being laid off with any representative of the Consolidated Seedsmen's Union?"

"A. I did or did not?"

"Q. I think you testified that you did not. What is the—I mean, what is your recollection on that point?"

"A. Whether or not I took it up with any——"

"Q. With any representative of the Consolidated Seedsmen's Union?"

"A. Well, I took it up to this effect, that I told—oh, you mean about me getting laid off? I thought you were talking about over time again." (Tr. 519).

This testimony should be compared with the following excerpt from the minutes of a special meet-

ing of the Board of Directors of Consolidated. (Board's Exhibit 34-C.):

“Mr. Butterfield asked what was to be done about the approaching layoff of Jack Thrift, a member of the Consolidated Seedsmen's Union. Mr. Meyberg stated that he was trying to fill him in at the present time, and would see what could be done about keeping him employed.”

Exception (22) On page 9, lines 26-29, the Examiner finds that:

“Thereafter as appears from the uncontradicted testimony of Loy, which is credited by the undersigned, the members of the Consolidated were informed by their representatives that ‘it was absolutely impossible to get a raise.’”

The only basis for this finding is the testimony of Loy that someone told him that it had been said at a meeting of Consolidated that it would be impossible to get a raise of any kind. (Tr. 556). There is no testimony at all as to who made the statement which “somebody” is supposed to have told Loy was made. To use such testimony as a basis for the finding that the “members of Consolidated were informed by their representatives” that they could not get a raise seems to be a far stretch.

In connection with this same matter, the Examiner refers to a meeting in Meyberg's office and finds that:

“Hulphers acted as spokesman for the employees and reiterated the substance of what had been told Meyberg that morning.”

This finding that Hulphers acted as spokesman for the employees is contradicted by the testimony of Loy upon whom the Examiner just previously so religiously relied. Loy testified:

“Q. Can you tell us what happened at this meeting?”

“A. Yes. There really wasn't much said. He wanted to know, asked a few questions, and we didn't have any speaker, and some fellow got up that was supposed to be a vice president of the Seedsmen's Union, and designated Eric Hulphers as the speaker and he pointed him out, and we had a little argument, I believe, and I told him to sit down.”

“Q. Was that Erich Regan that got up?”

“A. Yes, I believe it was Erich Regan. It was none of his business, and told him to sit down, that there was no speaker to the meeting, it was Mr. Meyberg's meeting, and he was going to do the speaking. So then he started.”  
(Tr. 549).

Exception (23) On page 9, lines 48-60 and page 10, lines 1-20 the Examiner makes a number of findings regarding the October, 1940 wage increase. These findings will be dealt with separately in this exception.

(1) On page 9, lines 47-55, the Examiner refers to a movement for a wage increase in the fall of 1940 and finds:

“That this move for wage increases was a move by the employees themselves wholly apart from Consolidated is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940 . . .”

Frankly, respondent is at a loss to find evidence in the record to support this finding. The minutes of the August 20, 1940 meeting of Consolidated (Board's Exhibit 13-A) show that:

“Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches and if a majority signed, they could be taken to Mr. Meyberg.”

In September of 1940, Montgomery suggested to Hook a movement for a general wage increase. Regarding this suggestion by Montgomery, Hook testified as follows:

“A. Yes, I believe that is his name; a truck driver. And I told him at the time I couldn't do anything unless it was through the union, and I didn't want——”

“Q. That is the Consolidated Seedsmen's Union?”

“A. Yes, sir.”

Trial Examiner Paradise: “Excuse me for interrupting. What was it Montgomery wanted you to do?”

The Witness: “He wanted me to go before the firm and ask for the raise. I told him the proper manner was to get up a petition, under the sanction of the union, the Consolidated Seedsmen’s Union, to present to the company in the proper, legal manner, and I didn’t want anything to do with that way of doing business.” (Tr. 346-347).

Thereafter Hook prepared a petition and circulated it among the employees. Another petition was prepared about that time by Butterfield, who was then president of Consolidated (Tr. 203). Both of these petitions were subsequently presented to Meyberg or Butterfield. The true nature of this movement for a wage increase in the fall of 1940 is very well shown by the testimony of Hulphers who testified as follows:

“Q. (By Trial Examiner Paradise) Just one question or two about Board’s Exhibits 13-A and B. In Board’s Exhibit 13-A, which is the minutes of the meeting of the Consolidated Seedsmen’s Union of August 20, 1940, it is stated that you reported that the men on floors four five and six were dissatisfied with the wages and they wanted a petition circu-



lated for a \$25 a week minimum wage. Do you recall having made such a report?"

"A. Yes, sir."

"Q. Then it is further stated that Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches, and that if a majority signed they could be taken to Mr. Meyberg. Do you remember that?"

"A. Yes."

"Q. And then it is stated that you, Eric Hulphers, moved that each department have a petition made up with wage scales, to be signed by each employee. Do you remember that?"

"A. Yes."

"Q. And that that motion was carried?"

"A. Yes."

"Q. Do you recall that?"

"A. Yes."

"Q. Now, as a matter of fact, was there a petition gotten up for each department, pursuant to that motion?"

"A. Not to my knowledge."

"Q. Well, do you recall what, if anything, was done to carry out the motion which, according to the minutes, was carried?"

"A. No. I have never seen anything."

"Q. Now, did I understand you to testify that at this meeting in Mr. Meyberg's office on

the 3rd of September that Mr. Butterfield presented a petition?"

"A. He presented both petitions."

"Q. What do you mean when you say 'both petitions'?"

"A. The petition for the upper floor, and another petition that Mr. Butterfield had got a lot of women's names on and, oh, other names from the other parts of the building."

"Q. And what, if anything, did he say when he presented the petitions? Do you remember?"

"A. He said, 'Here are—I want to present you with these petitions, Mr. Meyberg,' and he stepped up and laid them on his desk." (Tr. 203-205.)

Further testimony of Hulphers upon whom the Examiner relied shows that even Hulphers understood the movement to be one by Consolidated. Hulphers testified regarding the meeting in Mr. Meyberg's office as follows:

"Q. When he asked you who was the speaker for the group and pointed you out, why did you sit silent and tell him you didn't want to say anything?"

"A. Because the vice-president of the Consolidated Seedsmen's Union was there, and I figured it was his place to do the speaking and to carry on the meeting." (Tr. 185).

So far as any testimony of Loy sustaining this finding by the Examiner is concerned, his testimony

previously quoted (Exception 22, *supra*) would seem to show pretty clearly that it was not his understanding that Hulphers was leading this movement for a wage increase.

(2) On page 9, lines 59-60 and page 10, line 1, the Examiner finds that one of the petitions

“had been sponsored by a group led by Hulphers called for a substantial wage increase.”

The true facts as to the so-called “sponsored by Hulphers” petition are these: at the August 20, 1940 meeting of Consolidated, Hulphers started the ball rolling.

“It was moved by Eric Hulphers and seconded by Bill Eperson that each department have a petition made up with wage scales to be signed by the employees. Motion carried.”  
(Board’s Exhibit 13-A.)

Thereafter Hook, then a director of Consolidated, prepared the petition which was presented by Butterfield to Meyberg. Considering the testimony of Hook quoted *supra* that the only way he would do anything in this matter was through Consolidated and considering that these petitions were initiated at the August meeting of Consolidated and that they were presented by Butterfield, the president of Consolidated, to Meyberg at the meeting in which Hulphers by his own testimony refused to take any active part, it certainly takes quite an imagination to find that this petition was sponsored by Hulphers.

Exception (24) On page 10, lines 29-32, the Examiner finds that:

“The uncontradicted testimony of numerous witnesses establishes and it is found that memberships in the Consolidated were solicited and dues were customarily collected during working hours on the respondent’s premises.”

This finding is very similar to the finding referred to in Exception 15 *supra*. As we pointed out in that exception, Hulphers was given his application during his noon hour; and to other Board witnesses, Yoakum and Freeman testified that they did not observe any solicitation for membership for Consolidated; and respondent is unable to find the “numerous witnesses” who established this solicitation which the Examiner finds. Furthermore, any collection of dues during working hours on respondent’s premises was done after Consolidated had been recognized as the bargaining agent. In this connection, respondent wishes to call attention to the recent Circuit Court decision, *N. L. R. B. vs. Electric Vacuum Company, Inc.*, (C. C. A. 6th June 6, 1941) in which it was held that after valid recognition of a union (A. F. of L.), the employer, after the C. I. O. started to horn in, could enter into a closed shop contract with the bargaining agent (A. F. of L.) and thereby keep out the C. I. O. entirely. This case directly supports the position of respondent that, once having validly recognized

Consolidated, it could support that recognition even though such support was detrimental to some other union that was trying to horn in.

Exception (25) On page 10, lines 33 and 34, the Examiner finds that:

“ . . . on occasion the Board of Directors of the Consolidated held meetings in the warehouse.”

This finding is untrue. The evidence shows that this occurred on ONE occasion and then without the knowledge or consent of the management.

Exception (26) On page 10, lines 38 and 39, the Examiner finds that:

“ . . . it is clear that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.”

and then in footnote 9, lines 59-62, he finds that:

“Contrary to the contention advanced in the respondent’s brief, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.”

In Exception 15 *supra*, we have already discussed this contention of the Examiner that solicitation for memberships of the Consolidated was made during working hours in the plant. There we have already shown that even the Board’s prize witnesses



were not aware of such solicitation, and also that there was no testimony that there was any such solicitation prior to the recognition by respondent of the Consolidated as the bargaining agent for its employees. Furthermore, a comparison of the testimony as to solicitation in the plant during working hours for union memberships in A. F. of L. and the Consolidated shows the incorrectness of these findings.

Testimony regarding such solicitation by Consolidated is as follows:

Hulphers—Solicited Loy in the summer of 1940. (Tr. 151)

Yoakum—At no time observed any such solicitation. (Tr. 242)

Freeman—never observed any such solicitation. (Tr. 280)

Frauenberger—Circulated petitions during vacation and contacted men outside the plant. (Tr. 304)

Testimony re such solicitation by A. F. of L. is as follows:

Sage—Several employees told him that the union organizers were downstairs and calling them together in little groups. (Tr. 17). (From the record, there can be no doubt but that the reference was to A. F. of L. organizers.)

Hulphers—A. F. of L. organizers had been down at the plant for a month prior to the meetings of the Consolidated employees. They

had been soliciting memberships during this time and memberships in A. F. of L. were often discussed during working hours. (Tr. 179-181). Talk among employees on the job regarding joining A. F. of L. (Tr. 232). Hulphers, himself, was soliciting memberships in A. F. of L. at that time and on company time. (Tr. 182).

Freeman—Saw two or three A. F. of L. organizers on the shipping floor of the warehouse during August and September, 1937. (Tr. 274).

The facts speak for themselves. The only pertinent comparison is during the period PRECEDING the establishment of the bargaining agent. Regarding that period, the A. F. of L. solicitation was clearly evident although there is no evidence of Consolidated solicitation.

Exception (27) On page 10, lines 41-42, the Examiner finds:

“Supervisory employees and management representatives have continued to play an active role in the Consolidated.”

This finding represents an accumulation upon the Examiner's previous erroneous findings as to the status of Frauenberger, Luck, Hook, Hatfield, and Nesbit (see Exception 16 *supra*) and is clearly unfounded. As to Turton, to whom the Examiner refers in this same paragraph, she was not a representative of the management, nor has the Ex-

aminer even made such a finding. The Examiner did without any basis whatsoever find that Fraunberger et al, together with Turton and others, in assisting in the organization of Consolidated, appeared to be and were acting on behalf of the management. (Report page 7, lines 48-51.) Even this Examiner would not venture to make any direct finding that Turton was a representative of the management, but rather attempted to set forth such a finding in this indirect way. This example is typical of this whole report. Here he finds that others together with Turton et al represented the management in the organization of Consolidated. He has made no finding whatsoever respecting Turton. Now he finds that the management continued to play an active role in Consolidated and as part of his basis sets forth the fact that Turton was its secretary until June 7, 1938. Such an approach does not indicate a fair and unbiased intermediate report. This report is certainly in harmony with this approach. On page 11, lines 5-6, the Examiner finds that:

“The respondent has consistently refused to enter into any written agreement with the Consolidated.”

Thusly phrased, this finding misstates the true facts. The true finding should be as stated by the testimony of Luck which is the basis for the finding. His testimony is:

“I believe pretty nearly without exception they were turned back and were not signed,

with the understanding that there was no necessity of having them signed, that the agreement was an understanding and would be followed through as readily—the verbal understanding as well as a written one.” (Tr. 441).

Exception (28) On page 11, lines 7-13, the Examiner referring to Consolidated finds:

“It has obtained minor concessions for the employees and the satisfactory disposition of grievances, when Meyberg was willing to cooperate, but has been wholly ineffectual when its proposals to have run counter to his wishes. In matters of substance such as increased vacation privileges to employees with more than 5 years of service, requested by them since 1938, the Consolidated has been content with presenting the requests of its members. Similarly, the two-year-old demand of the employees for wage increases was met, in October, 1940, only because of the threat that an outside union might be brought in.”

This finding, along with subsequent findings and conclusions of the Examiner, are certainly illustrations of twisted wishful thinking. This particular finding is somewhat inconsistent with the prior findings of the trial Examiner that:

“Early in October, 1937, the Consolidated prepared and submitted to Meyberg a list of 20 ‘Suggestions,’ concerning wages, hours and

working conditions. While many of these were statements of existing practices, several represented changes of substantial benefit to the employees . . . However, the respondent granted wage increases ranging from 5 to 18 per cent.” (Report page 7, lines 55-58, page 8, lines 3-4.)

In addition to the substantial benefits obtained in the fall of 1937, Consolidated obtained for the employees quite substantial wage increases on October, 1940. The finding of the Examiner that this 1940 wage increase was made:

“only because of the threat that an outside union might be brought in”

is not true. The wage increase was granted due to the activities of Consolidated, initiated by Hulphers' suggestion at the August 20, 1940 meeting that the departments draw up petitions for wage increases to be signed by the employees, in circulating wage petitions and presenting them to the management. This is discussed at length in Exception 23 supra. Probably the real answer is that Consolidated became more active and determined after some of its members threatened to go to the A. F. of L. if something was not accomplished. (Board's Exhibit 13-A.) (Tr. 200.) This is not unusual. The Examiner must be aware of many similar incidents when either the A. F. of L. or the C. I. O. is enthroned and the other starts to make inroads. But this should not be blamed on respondent.



Conclusions Regarding the  
Consolidated

Exception (29) On pages 11 and 12, the Examiner makes a number of conclusions regarding the Consolidated. Respondent excepts to all of these conclusions and without imposing an added burden upon the Board by quoting them at length, respondent will set forth his exceptions in the order of the findings.

(1) That Consolidated was created at the direct suggestion and as a result of intimidatory and coercive statements by Sage, a representative of the respondent, is false in every material respect. Sage did not make any intimidatory or coercive statements (see Exception 8 *supra*). Sage was not a representative of the respondent. (See Exception 2 *supra*.) Futhermore, Consolidated was not created at the direct suggestion of Sage. The employees requested Sage to call them together. After an impartial election, the employees themselves organized Consolidated with the assistance of Voorhees at a meeting which would not convene until Sage had left.

(2) That the organization was accomplished as a result of meetings and other activities conducted on respondent's premises during working hours with the assistance of certain enumerated employees designated by the Examiner as either supervisory employees or employees with interests identified with the respondent's interests is likewise wrong

in every material respect. The evidence clearly shows that these meetings leading to the organization of Consolidated were held after working hours. The circulation of the pre-organization petitions was done after hours. (See Exception 15 *supra*.) Possibly the Examiner had still other activities in mind but what they were no one could gather from the record. That the organization was accomplished with the assistance of Hill, Gates and Johnson certainly finds no support in fact. Hill and Gates were admittedly eliminated at the first real meeting of the employees. There certainly is nothing to support the contention that Johnson rendered any material assistance in its organization. As to Clark, while he was a member of the pre-organization committee, he took no active part in its organization so far as the record shows, and the only basis for this conclusion is a very lively imagination. As to Sage, he wasn't a supervisory employee nor were his interests identified with those of the respondent. (See Exception 2 *supra*.) As to Turton, the conclusion as to her position has already been discussed (Exception 27 *supra*.) As to the others, the gross error of this conclusion is shown by Exception 16.

(3) In anticipation and recognizing the inaccuracy of his previous finding, the Examiner states that the fact that Consolidated ridded itself of Sage, Hill and Gates and other supervisors having the right to hire and discharge in no way absolves

the respondent of the responsibility for the activities of its representative in the organization of Consolidated. As a finding of fact, this is immaterial because there is no evidence that anyone having the power to hire and fire ever took any part in the organization of Consolidated. As a conclusion of law, it is wrong when one considers that Hill and Gates were out of the picture before the employees ever decided to hold an election and that Sage took no part in the election and was out of the picture before any further steps were taken in its organization.

(4) The Examiner finds that the record gives no basis for assuming that Consolidated would have been formed without the "interference" of Sage, but rather that it gives a basis for the contrary assumption. In the first place, such a conclusion is of no consequence, because as we have shown Sage's activities in the organization of Consolidated do not in any way support the charges that are here being made against respondent.

The Characterization of Sage's activities as "interference" is based upon the Examiner's entire erroneous biased belief as evidenced throughout this report that this union is a company-dominated union. Secondly, the evidence shows that the employees themselves wanted to organize; that they chose an independent union by a secret ballot election, the fairness of which is not questioned in the entire record; that they organized through em-

ployees whom they subsequently chose as their leaders; and that when Sage discontinued his activities in connection with the organization of the employees, Fraunberger, a man of high caliber who had been with respondent 14 years, took the initiative in getting the ball rolling. Contrary to this finding of the Examiner, these facts pretty clearly indicate that there was ample leadership among the employees, other than Sage, for the organization of an independent union.

(5) The Examiner finds that Consolidated's policy of excluding employees with the right to hire and fire cannot be accepted as showing freedom from company domination in the face of continued membership and activity of supervisory employees and of others whose interests are identified with those of the respondent. In the first place, the Examiner takes the position that the union is presumed to be company-dominated and that the burden is upon respondent to disprove this presumption. While his statement might be convincing to him, it certainly would not be convincing to anyone with an unbiased mind. Secondly, his statement that there was continued membership and activity of supervisory employees is false and has been adequately dealt with already. His reference to the activity "of others" whose interests are identified with those of the respondent is nothing but an attempt to infer that, aside from those specifically mentioned in the report whom we have already shown do not have interests identified with those



of the management, there were others with interests identified with the management who took an active part in the organization of Consolidated. If there were these others, why didn't the Examiner say who they were and make specific findings as to their duties and their relationships with the respondent? The absence of such findings shows the unfairness of his position.

(6) The finding, that the election in September of 1937 followed the so-called interference and coercion practiced by Sage and constituted a further interference by respondent and cannot be taken as reflecting a free choice of the employees, is in all material respects false. There was not interference and coercion of any kind practiced by Sage (see Exception 8 *supra*). Furthermore, the election was not held as a result of any of the activities of Sage but was held because the employees themselves determined that the only proper way to ascertain what they, as a group, wanted was to hold an election. At this election, they had a ballot which had a preferential position for the C. I. O. and which had a tortiary position for the independent union. There is no evidence—and could be none—that there was any coercion or unfairness of any kind regarding the voting by the employees. In fact no such contention was advanced at the trial even by the A. F. of L. boys. The Examiner really went out on a "limb" here. The ballots were counted by a group whose status as employee representatives is established by the subsequent election



of most of this group to offices in Consolidated by the employees themselves in their general meeting. In the light of these facts, the conclusion that this election did not reflect the free choice of the employees is absolutely and unwarrantedly biased and false.

(7) The respondent refers to a number of findings, most of which are false in their material aspects, as a basis for his conclusion that the subsequent history of Consolidated shows further evidence of domination by the respondent. Of course, these activities subsequent to the recognition by respondent of Consolidated as the bargaining agent can be of absolutely no significance regarding the charge here which is primarily one of company interference in the formation of this union. Furthermore, his finding that supervisory employees and other management representatives continued their membership and activity is erroneous. As we have shown before, the individuals to whom the Examiner is here referring were neither supervisory employees nor management representatives. The finding that respondent violated the act by its so-called contributions tops all of the ridiculous findings which this Examiner has made in this report. The purpose of the act is to promote the best harmony and feeling of mutual responsibility between employers and employees. If these acts of respondent in furnishing ice cream for a picnic which both union and nonunion representatives at-

tended (Meyberg, Tr. 568) and in allowing the use of a company truck and furnishing cigarettes as prizes to the winning ball team at another picnic which both union and nonunion representatives (Gates, Tr. 74 and Meyberg, Tr. 568) attended constitute a violation of Section 8 (2), then every employer of any substantial size whom respondent knows is guilty of an unfair labor practice, whether the union be C. I. O., A. F. of L. or independent.

The Examiner finds that Consolidated GRANTED the use of respondent's premises for at least one social function. This is not supported by the record. The record does show that Consolidated used the warehouse for one dance, after recognition, but by the testimony of Mr. Meyberg, this use was not contributed gratis by the company (see Exception 19, supra).

(8) The Examiner makes numerous references to the alleged difficulties of Consolidated in obtaining the support of the employees by so-called "various devices" such as serving of refreshments and bank nights. One would think that the Examiner was not familiar with the practice of HIS "legitimate" unions of levying fines for not attending meetings or otherwise coercing their members into attending meetings. An unbiased Examiner would have concluded that a company-dominated union WOULD NOT encourage participation BY THE MEMBERS.

(9) The Examiner finds that the record is replete with evidence showing the need for a written agreement. However, he is very careful not to

point out any of this evidence. As we have shown supra (Exception 27) the leaders of the union did not demand a written agreement as they placed the company's oral agreement on the same footing as a written agreement.

(10) In October, 1937, respondent recognized Consolidated as the bargaining agent for its employees. Thereafter and through the activities of Consolidated (see Exception 23 supra) respondent in 1940 granted its employees substantial wage increases. Again the Examiner finds that "these wage increases were granted to prevent union organization," implying that there was not already a union organization existing, and "that in insisting that they be granted through Consolidated, the respondent gave substantial support to Consolidated." This finding is pretty well taken care of by Exception 23 supra. It is rather difficult to see how respondent in carrying out a bona fide contract whereby it had recognized Consolidated as the bargaining agent for its employees was improperly giving substantial support to that organization (see *N. L. R. B. v. Electric Vacuum Company, Inc.*, Exception 24, supra).

(11) The Examiner refers to the evidence concerning Hook's dues delinquency as showing the "affinity" between respondent and Consolidated. If Hook were such a representative of the management, why would he be receiving such a letter from Consolidated. This is just another example of how the Examiner's story doesn't hang together.

(12) The Examiner finds that respondent dominated and interfered with the formation and administration of Consolidated and contributed support to it, and by the October, 1940 wage increases, and by the alleged statements attributed by Thrift to Hill, interfered with the employees in the exercise of their rights under Section 7 of the act. If there was ever a finding which was a patent admission of flimsiness of a charge alleging a violation of Section 8 (1), this is it. These findings have been referred to specifically and will not be reiterated here. However, respondent wishes to point out that the entire case of the Board rests upon a fundamental premise that respondent dominated the formation of Consolidated. This in turn rests upon the classification by the Examiner of certain employees as supervisory employees. As we have shown, this classification by the Examiner of these employees is absolutely an outrage, and when their status as nonsupervisory employees is recognized, the alleged domination in the formation of the union falls flat and together with it tumbles the alleged interference in the administration of Consolidated.

Hook, the so-called "supervisory employee," was the one who in the fall of 1940 circulated the wage petition asking for the largest wage increase. This petition was signed by so-called "supervisory employees" Nesbit and Hatfield. Meyberg's secretary was nonunion and Consolidated objected to "leaks" to other unions and requested Meyberg



to dictate all his future letters to Consolidated to a secretary who was a member of Consolidated. Loy personally went to Meyberg and got a raise. Consolidated had considerable difficulty with respondent in getting satisfactory results in its attempt to get preferential hiring and this difficulty led to the submission by Consolidated to respondent of a request for a closed shop. Aren't these facts a bit inconsistent with the position of the Examiner that Consolidated was company dominated. Respondent cites these instances, a few of many disclosed by the record, merely to show how the Examiner's story doesn't hold together.

Exception (30) Respondent excepts generally to the finding of the Examiner on page 12, lines 27-32 that the activities of respondent have a close, intimate and substantial relation to Interstate Commerce and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. In this connection, respondent feels that the record proves the exact opposite.

In conclusion, respondent wishes to point out that the entire case of the Board's rests fundamentally upon the classification of certain employees, Frauenberger, Hatfield, Nesbit, Hook and Luck as supervisory employees. Respondent has shown and the record demonstrates that there is no conceivable ground upon which these employees could be classified as supervisory employees. From the standpoint of respondent, it is grossly unfair



to attach to respondent the stigma which is attached by these proceedings, especially when respondent has bent over backwards to keep its hands out of the organization or administration of any bargaining agent the employees might select. Furthermore, from the standpoint of the employees, once Consolidated was properly recognized by respondent as the bargaining agent for its employees, any deficiency in Consolidated's power as a bargaining agent is a matter which should be left to the members themselves and is not a proper matter for any action by the Board.

Respondent wishes to call attention of the Board to the fact that the name "Frauenberger" is misspelled in some places in these Exceptions. Whenever the name "Fraunberger" is used, it is meant to apply to Mr. Frauenberger, there being only one Mr. Frauenberger involved in these proceedings. We regret that the pressure of time has not permitted us to correct this typographical error.

Dated: July 30, 1941.

Respectfully submitted,

LATHAM & WATKINS,

By PAUL R. WATKINS,

RONALD C. ROESCHLAUB,

Attorneys for Respondent,

Germain Seed and Plant

Company,

1112 Title Guarantee Building,

411 West Fifth Street,

Los Angeles, California.

United States of America  
Before the National Labor Relations Board  
Case No. C-1913

In the Matter of

GERMAIN SEED AND PLANT COMPANY

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN & HELPERS OF AMERICA,  
LOCAL NO. 595, AFL.

Mr. James A. Cobey, for the Board.

Latham & Watkins, by Mr. Paul R. Watkins, of  
Los Angeles, Calif., for the respondent.

Mr. Ralph Woolpert, of Burbank, Calif., for the  
Union .

Mr. Marvin C. Wahl, of counsel to the Board.

## DECISION AND ORDER

### Statement of the Case

Upon an amended charge duly filed on February 28, 1941, by International Brotherhood of Teamsters, Chaffeurs. Warehousemen & Helpers of America, Local No. 595, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, Cali-

fornea), issued its complaint dated April 5, 1941, against Germain Seed and Plant Company,<sup>1</sup> Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint, accompanied by notice of hearing, was duly served upon the respondent, the Union, and Consolidated Seedsmen's Union, Inc., herein called the Consolidated.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) by various specified acts on the part of its officers and agents dominated and interfered with the formation and administration of the Consolidated, and contributed support and assistance to it; and that (2) by the foregoing acts, by announcing and placing into effect a general wage increase in September or October 1940, by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union, and by uttering remarks disparaging to the Union, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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(1) The designation of the respondent in the caption of the case was corrected at the hearing to read as above stated.

On April 19, 1941, the respondent filed with the Regional Director a motion to dismiss the complaint on the grounds that it was not engaged in commerce within the meaning of the Act and that the charge upon which the complaint was issued did not conform to the Rules and Regulations of the Board. It also filed a motion for a bill of particulars and a motion to strike various portions of the complaint on the ground that they were "conclusions," "generalities," and "unintelligible." On April 23, 1941, the respondent filed its answer, in which it admitted certain allegations of the complaint pertaining to its business but denied that it had engaged in the unfair labor practices alleged in the complaint or that such alleged acts affected commerce within the meaning of the Act.

Pursuant to notice, a hearing was held at Los Angeles, California, from April 24 to 28, 1941, before James C. Paradise, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented and participated in the hearing. The Consolidated did not appear. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the beginning of the hearing, the portion of the respondent's motion to dismiss the complaint predicated upon the alleged invalidity of the charge was denied by the Trial Examiner. At the same time, decision was reserved on that portion of the

motion based upon the claim that the respondent was not engaged in commerce within the meaning of the Act. The Trial Examiner denied the motion in his Intermediate Report. The motions for a bill of particulars and to strike certain allegations of the complaint were also denied by the Trial Examiner, except that counsel for the Board was directed to particularize the allegation that the respondent had interfered with, restrained, and coerced its employees "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the Union." Thereafter, this allegation was stricken by consent of the parties. During the course of the hearing, the Trial Examiner ruled on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On June 13, 1941, pursuant to a request made by the Trial Examiner, the parties entered into an additional stipulation concerning the business of the respondent. In accordance with its terms, the stipulation was made a part of the record as Trial Examiner's Exhibit No. 1.

The Trial Examiner thereafter filed his Intermediate Report, dated June 17, 1941, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices within the mean-



ing of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, and recommended that it cease and desist therefrom and withdraw recognition from and disestablish the Consolidated. Thereafter the respondent filed exceptions to the Intermediate Report. The Board has considered these exceptions to the Intermediate Report and insofar as they are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. The business of the respondent.

Germain Seed and Plant Company is a California corporation having its principal office and place of business at Los Angeles, California. It is engaged in the growing, refining, purchasing, and selling of seeds, bulbs, plants, and nursery stock, and in the purchase and sale of insecticides, poultry, and garden supplies and remedies, hardware, and other similar products.

The respondent operates a wholesale and warehouse department in Los Angeles, where it is engaged in selling both at wholesale and retail. It also has retail stores in Los Angeles, Salinas, and Santa Maria, California; a retail store and nursery in Van Nuys, California; a warehouse and wholesale and retail store in San Francisco, Cali-

ifornia; a warehouse in Fresno, California; and a bulb farm at Camarillo, California. During 1940, the respondent purchased various products valued at approximately \$900,000. About 17 per cent of these products, valued at about \$150,000, originated at points outside the State of California. During the same year, the respondent sold products valued at approximately \$1,500,000. About 24 per cent of such products, valued at about \$360,000, were shipped to points outside the State of California.

This proceeding concerns only the warehouse and retail store in Los Angeles and the retail store and Nursery in Van Nuys. In 1940, the respondent's purchases for this warehouse amounted to \$719,860, of which 40 per cent was shipped to the warehouse from points outside the State of California. During the same period, the products sold from the warehouse were valued at \$873,968; 25 per cent of these products were shipped to points outside the State of California. Approximately 90 per cent of the business of the Van Nuys retail store and nursery is handled through the warehouse, from which merchandise is shipped directly to customers of the Van Nuys establishment. Purchases made for the Los Angeles retail store in 1940 amounted to \$88,739, of which about 5 per cent was shipped to this store from points outside the State of California. The products sold by the retail store during the same period were valued at \$158,393.50; about 2 per cent of these products were shipped from

this store to points outside the State of California.<sup>2</sup>

On October 31, 1940, the respondent employed 176 workers, of whom 146 were employed at the Los Angeles and Van Nuys establishments.

## II. The organizations involved.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

Consolidated Seedsmen's Union, Inc., is an unaffiliated labor organization, admitting to membership employees of the respondent.

## III. The unfair labor practices.

### A. Supervisory employees.

The employees of the respondent discussed below played a large part in the formation and administration of the Consolidated. As noted previously, the complaint alleges that the Consolidated was organized, dominated, and supported by the respondent. The respondent contends that it was not responsible for the activities of these employees in view of the positions which they occupied in the plant.

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(2) The record does not disclose whether merchandise is shipped to this store from the warehouse or whether any of the sales made at this store are shipped from the warehouse.

Walter P. Sage had been in the employ of the respondent for 22 years. He was in charge of the shipping department for several years, then served as superintendent of the warehouse and order-filling department for about 12 years, and became purchasing agent in about 1933. As purchasing agent, Sage was in charge of the purchase of insecticides, spray pumps, and miscellaneous items. Manfred Meyberg, president of the respondent, testified that Sage was included among the small group of employees designated as "department managers," who met regularly at the plant every Saturday morning to discuss means of bettering the respondent's service. Present at these meetings were Meyberg, W. J. Schoenfeld, vice-president of the respondent, Marks, the sales manager, Dwight Gates, the manager of the warehouse and mill room, Woolcott Hill, the manager of the shipping department, and Pieters, the supervisor of the third floor of the warehouse.

Harold Frauenberger had been employed by the respondent for 14 years. He held the position of city shipping clerk in the warehouse; Hill was his immediate superior. Although Frauenberger had no authority to hire, discharge, or discipline employees, he was charged with the duty of relaying Hill's orders to the truck drivers, assigning and directing work, helping load the trucks, checking out the loads, and attending to complaints concerning deliveries.

Vivian Nesbit, who had been in the respondent's employ for 17 years, was an order filler on the

fourth floor of the warehouse, his superior being either Hill or Gates, whose offices were on the first and fifth floors, respectively. The number of employees on the fourth floor ranged from two to five depending on the season. Nesbit denied that he was in charge of this floor, but explained that "my idea of being in charge is being in charge . . . so as to hire and fire." Roy Yoakum, Charles Loy, and Eric Hulphers, employees of the respondent, testified, and we find, as did the Trial Examiner, that Nesbit was in charge of and directed the work of the other employees on the fourth floor.

Kenneth Luck testified, and we find, that he was head of the bulb department on the third floor of the warehouse. While at times during the off-season, he had been the sole employee in that department, there were three or four other employees under him during the busy season, which normally covered approximately 7½ months during the year. He supervised and inspected their work, prepared the invoices, and purchased merchandise for resale. Concerning his authority to recommend hiring or discharging, he testified:

Well, I could certainly recommend it, whether I was in any position or not. I mean, as to having the ability to, why, in my department at times it was very busy and we did have more people, and when some of them possibly weren't getting the job done, I would go to Mr. Pieters,



who was in charge of that department as to hiring and firing, and tell him I would like to have somebody either replaced or put on some other job . . . I would possibly like recommend.

We find that Luck had authority to recommend persons for hire and discharge.

Allen Hook had been employed by the respondent for 18 years and operated the mills on the sixth floor of the warehouse where seeds were cleaned. During the busy season, about 12 additional employees worked in this department. Hook testified, and we find, that his duties required him to relay the orders of Gates to these employees as well as to the "bull gang," to assign work, be responsible for its proper performance, and to guide and instruct the men. He testified that "If they don't do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do."

Daniel Hatfield had been employed by the respondent for 22 years and filled seed orders on the fifth and sixth floors of the warehouse. When the work required, he had one or more helpers. When he needed additional help, he asked Gates for it, but if the need was urgent, he testified, "I just grab anybody that is there," usually from the "bull gang." He directed and supervised the work of his helper or helpers and was responsible for the proper filling of seed orders.

One of the early demands which the Consolidated made was for "A better allotment and statement

concerning sub-foremen and their position.”<sup>3</sup> It is evident from the record that Frauenberger, Nesbit, Luck, Hatfield, and Hook were the only employees of the respondent who could be characterized as subforemen. Hook testified that this demand affected himself, Nesbit, and Hatfield, and that they believed that they should get more pay than the ordinary employees “for being a little more responsible for the type of work we was doing.” Moreover, at the time of the hearing, Frauenberger, Nesbit, Hook, and Hatfield received \$115 per month as wages from the respondent. Luck received \$120 per month. It appears that none of the respondent’s production and maintenance employees who testified received more than \$100 per month from the respondent.

W. S. Clark was in charge of the Van Nuys nursery. He was included in a group of management representatives invited by the Consolidated to attend a dinner meeting on May 2, 1939, in order to promote a “closer relationship” between the Consolidated and the management.

Upon the basis of the entire record, we find that Sage was an executive of the respondent and represented the respondent in the activities described below, that Frauenberger, Nesbit, Hook, Luck, and

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(3) On December 22, 1937, the Consolidated issued a notice to its members setting forth “agreements obtained” from the respondent. One of the items claimed to have been agreed to was “A better allotment and statement concerning sub-foremen and their positions.”

Hatfield were working foremen with supervisory authority whose interests were closely identified with those of the management, and that Clark was a supervisory employee. We also find that the employees of the respondent had just cause to believe that the foregoing supervisors and officials were acting for and on behalf of the respondent,<sup>4</sup> and that the respondent is responsible for the activities of these employees, as described below, in connection with the organization and administration of the Consolidated.<sup>5</sup> The respondent concedes, and we find, that Gates, the manager of the warehouse and mill room, and Hill, the manager of the shipping department, were supervisory employees with authority to hire and discharge.

1. The organization of the Consolidated

Commencing about August 1937, efforts were made by representatives of the American Federation of Labor to organize the Los Angeles employees of the respondent. There was much discussion of the question of union organization among the employees. The activities of the union organizers were

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(4) *International Association of Machinists; Tool and Die Makers, Lodge No. 35, etc. v. N. L. R. B.*, 311 U. S. 72; *N. L. R. B. v. Link-Belt Company*, 311 U. S. 584.

(5) *H. J. Heinz Company v. N. L. R. B.*, 311 U. S. 514; *Swift & Co. v. N. L. R. B.*, 106 F. (2d) 87 (C. C. A. 10).

brought to the attention of Sage, the respondent's purchasing agent. Sage testified that some of the employees discussed with him the desirability of organizing a union of some kind; the only ones whose names he could recall were Nesbit and Hatfield. Sage testified, further, and we find, that as a result of these discussions, he decided to call a meeting of the employees and that he "just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would." As a result, a meeting of 15 or 20 employees was held on the shipping floor of the Los Angeles warehouse after working hours on a Saturday in August 1937. Among those present at the meeting were Hill, Gates, Hatfield, Nesbit, Hook, and Luck.<sup>6</sup>

Sage presided at the meeting and was the only speaker. He testified, and we find, as did the Trial Examiner, that he stated to the employees:

"Several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind," and I made the suggestion that, "Perhaps you would like to have a little independent union of your own."

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(6) All these employees are found in Section III A, *supra*, to be representatives of the management.

They said that they wanted to form the union, and I said, "Well, I think then you should have a legal man to do that for you." And they asked me if I knew of anyone, and I told them I did . . .

Sage then offered "to get a man for them if they wanted one," and suggested the name of J. P. Voorhees. Prior to this meeting, Sage explained at the hearing he had heard that an "independent" union was functioning at the local plant of the Cudahy Packing Company and had conferred with one David Stratton, the secretary and business agent of that union, in order to obtain more information about it. Stratton, Sage testified, had given him the name of Voorhees as an attorney who was familiar with the organization of "independent" unions.

In addition, Hulphers, Yoakum, and Alfred Freeman, all employees of the respondent, testified that at this meeting Sage made statements to the following effect: That they were all one happy family and wanted to be sure that what they did was right; that they should not do anything which might endanger their jobs; that the respondent would prefer a "house" union to an "outside" union; and that President Meyberg and Vice-President Schoenfeld had plenty of money and could close the plant down at any time. Of the foregoing statements, Sage denied only having said that Meyberg and Schoenfeld had plenty of money and could close the plant down at any time. The Trial Examiner found, and



we find, that Sage made the statements attributed to him.

About 2 weeks later Sage again held a meeting of employees at the same place on a Saturday afternoon after working hours. Voorhees, whom Sage had requested to attend, and Stratton were present. Sage introduced Voorhees as a lawyer experienced in the organization of "independent" unions. Voorhees told the employees that they could form any union they pleased, explained the alleged advantages of "independent" unions over "outside" unions, and advised them to incorporate. He also stated that employees having the right to hire, discharge, or discipline or occupying executive positions could not belong to a union. Hill then inquired about his right to be present and was told that both he and Gates should leave. They departed but Sage, Nesbit, Hatfield, Hook, and Luck remained. Voorhees then introduced Stratton, who spoke briefly about the success of the "independent" union at the Cudahy plant.

It was also suggested at this meeting that an election should be held to determine the wishes of the employees before an "independent" union was formed. Two or three days later an election was held in the plant during working hours. Printed ballots, the source and authorship of which are not established by the record, were distributed to the employees during working hours. Richard Kadous, an employee of the respondent, testified that Frau-

enberger, who has been found herein to be a supervisory employee, undertook to arrange the details of the election. Hulphers testified that Frauenberger handed him his ballot and that a ballot box for the traffic department was kept on Frauenberger's desk. Frauenberger denied that he had anything to do with the "arrangement" of the election. He did not deny, however, that he had handed Hulphers a ballot or that a ballot box was kept on his desk. We find that Frauenberger arranged the details of the election and actively participated in the election. Other ballot boxes were placed in the various departments of the warehouse, the Hill Street store, and the Van Nuys branch. The employees voted at such times as they found convenient and the ballots were counted and tabulated on the shipping floor.<sup>7</sup>

The ballots gave the employees a choice of the C.I.O., the A.F. of L., an "independent" union, or "Have Mr. Meyberg talk to us." Of 102 ballots cast, 45 were for an "independent" union, 33 for the A.F. of L., 11 for a talk by Meyberg, 3 for the C.I.O., and 10 were spoiled. Although less than a majority had voted for an "independent" union,

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(7) None of the witnesses was able definitely to state how the persons who counted the ballots were chosen, although there is some evidence that Frauenberger appointed them. Among those in the group were W. S. Clark and Vivian Nesbit, both of whom have been found above to be supervisory employees.

the sponsors of Consolidated nevertheless proceeded with their organizational activities.

A pre-organizational committee was then created, composed of employees from the various departments. None of the witnesses, including members of the committee, was able to explain how the committee was chosen. The committee included Clark, Frauenberger, Luck, Hook, and Dorothy Turton, private secretary to Vice-President Schoenfeld.<sup>8</sup> The members of the pre-organizational committee circulated petitions designating themselves as "a committee to formulate an independent union" and to represent the employees for the purposes of collective bargaining; they also collected initiation fees. These activities were carried on in the warehouse during working hours about September 1, 1937. Among the signers of the petitions were Turton, Sage, Clark, O. E. Johnson, assistant manager of the Hill Street retail store, A. Stanley Williams, assistant to Earl E. Sidebottom, secretary-treasurer of the respondent,<sup>9</sup> Nesbit, Hatfield, Hook, Frauen-

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(8) As private secretary of the respondent's vice president, Turton, we find, occupied a confidential position which allied her closely with the respondent, and gave employees just cause to believe that she represented the management. Cf. *Matter of Central Greyhound Lines, Inc., of New York and Brotherhood of Railroad Trainmen, etc.*, 27 N. L. R. B., No. 163.

(9) We find that Johnson and Williams are representatives of the management.

berger, and Luck.

On September 9, 1937, Articles of Incorporation of the Consolidated, prepared by Voorhees, were executed. Included among the seven incorporators, who also became the first Board of Directors, were Frauenberger, Turton, Hook, Luck, and Clark.<sup>10</sup> After the Consolidated was incorporated and the by-laws drafted, another meeting of the employees was held in the respondent's Hill Street store. Voorhees testified, and we find, that at this meeting several employees questioned whether Sage had the right to belong to the Consolidated in view of his supervisory or executive position. Voorhees then stated that "since they felt he was in that position . . . that he had no right in the meeting whatsoever" and asked Sage to leave. There is no evidence that Sage had any connection with the Consolidated after this occurrence.

Meyberg testified, and we find, that after one of these meetings, the respondent distributed a signed statement to its employees as they left the premises. The statement reads as follows:

#### A STATEMENT OF FACTS

Because of many stories and rumors that are being circulated and believing that those with whom we have worked side by side have confidence in their employers and will welcome

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(10) Clark and Hook resigned as directors on September 20, 1937.

comment from time to time on matters of vital interest to our business and our jobs, we wish to say that:

This business believes in the American right of every man and woman to work without coercion, or intimidation of any sort. In support of this principle we believe in the open shop and, in justice to all, we are opposed to any form of closed shop agreement.

You do not have to join any labor union or organization in order to hold your jobs. The law does not require it. This business does not require it.

You do not have to pay dues, levies, nor any kind of tribute to any organizer or group to hold your job.

You do not have to belong to any organization to get wage increases or enjoy shorter hours. Whenever these benefits are possible they are made to those who do not belong to any organization just the same as to those who do.

You do not have to be a member of any organization. Likewise, you are at liberty to join any lawful organization.

This business takes pride in the high type of its personnel and the friends they have made of thousands of customers.

It is a pleasant relationship that should be continued for the best interests both of em-



ployes, and of customers, who after all are our real employers, whether our job happens to be selling, marketing or delivering merchandise, or planning and managing the many activities involved in modern business.

We have steady employment. Our operations are all carried on in a spirit of friendly acquaintanceship, in close contact with each other and with the public.

There are no inaccessible "bosses". Everyone knows everyone else. We like to feel that we work with, not against, each other. We want to meet each day in that spirit.

GERMAIN SEED & PLANT CO.  
MANFRED MEYBERG,  
President.

On September 28, 1937, the Consolidated informed the respondent that it represented a majority of the employees and submitted the preorganization petitions and membership applications in support of its claim. This evidence was checked by the respondent which, on October 1, recognized the Consolidated as exclusive representative of its employees at the Los Angeles and Van Nuys establishments.

2. Subsequent history of the Consolidated.

Although Sage withdrew from the Consolidated after it was incorporated, various supervisory employees and representatives of management con-

tinued to play an active role in the Consolidated. Frauenberger was its president from September 1937 to April 5, 1938, Luck from April 1938 to April 1939, and Hook occupied that office at the time of the hearing. Turton was secretary until she left the respondent's employ on June 7, 1938, and Violet Ashley, who succeeded Turton as Vice-President Schoenfeld's private secretary, was secretary of the Consolidated from August 1938 to November 1938. The directors since the beginning of 1938 have included, at various times, Luck, Hook, Hatfield, Nesbit, and Frauenberger.<sup>11</sup>

Early in October 1937, the Consolidated prepared and submitted to Meyberg a list of 20 "Suggestions," concerning wages, hours, and working conditions. While many of these were statements of existing practices, several represented changes of substantial benefit to the employees. The respondent approved all but four of these suggestions; those rejected included changes in the length of the work week, 2 weeks vacation with pay, and restoration of the 1929 wage scale. However, the respondent granted wage increases ranging from 5 to 18 per cent. The Consolidated did not then ask the respondent to enter into a written contract covering those matters upon which the parties had agreed. On October 14, 1937, however, the Consolidated in-

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(11) Employees having the power to hire and discharge have been refused membership in the Consolidated.

formed the respondent that its members had authorized its Board of Directors "to proceed with making definite agreement . . . as per the suggestions already presented . . ." It does not appear that anything further was done toward obtaining "definite agreements" in accordance with the approved suggestions.<sup>12</sup>

Despite the increases granted by the respondent in October 1937, there was considerable dissatisfaction among the employees with the wage scale. On February 1, 1938, a petition was presented to the Consolidated on behalf of a group of employees by their representative, Hook, calling for, among other things, \$100 per month as a minimum wage for common labor. The Board of Directors of the Consolidated voted to take no action on this request and nothing further was done about it until August 20, 1940. At that time Hulphers, an employee of the respondent and member of the Consolidated, again demanded action on this request. The minutes of a meeting held on that day state: "The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union." At the same meeting of the Consolidated, a motion was

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(12) The minutes of a meeting of the Consolidated held on August 20, 1940, show that one of the employees proposed that the Consolidated obtain a signed agreement, to which the president replied that this could not be done.

carried requiring the president to "go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions."

Thereafter, as appears from the uncontradicted testimony of Loy, an employee of the respondent, which we credit, as did the Trial Examiner, the members of the Consolidated were informed by their representatives that "it was absolutely impossible to get a raise." As a consequence, in the first week of September 1940, a number of employees, including Hulphers, Loy, and R. H. Montgomery, went to the offices of the Union where several of them signed applications for membership in the Union. The following morning Hulphers, Loy, and Montgomery went to see Meyberg. They told him that they had not been able to obtain satisfaction through the Consolidated, that there was unrest among the employees, and that they wanted to consult him before going any further. Meyberg stated that he wished to speak to all of the employees and asked that, in the meantime, the men prepare a petition embodying their demands. That evening, after working hours, practically all of the men in the warehouse and some of the women gathered in Meyberg's office. John Butterfield, who became president of the Consolidated shortly thereafter, presented two petitions to Meyberg, one which had been sponsored by the group led by Hulphers calling for a substantial wage increase, and one which had

been sponsored by Butterfield himself calling for a smaller increase. Neither of these had been authorized by the Consolidated. Hulphers reiterated the substance of what had been told Meyberg that morning. There was some discussion of the possibility of the employees joining an outside union. Meyberg then stated that he would like to discuss the problem with the men only and suggested that he take them to dinner at a later date, at which time the matter could be further discussed.

That this move for wage increases was supported by members and non-members of the Consolidated, wholly apart from the Consolidated, is established not only by the testimony of Loy and Hulphers, but also by the following statement contained in the minutes of a meeting of the Consolidated on September 13, 1940:

Union [i.e., Consolidated] and non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

On September 17, Meyberg met with the men at the plant after having taken them to dinner. There were both members and non-members of the Consolidated present. We find, as did the Trial Examiner, on the basis of Hulpher's undenied testimony, that Meyberg addressed the employees, stating that he had heard of unrest among them, and that "We are all here together, so we want to try to work all these things out among ourselves. We



are one happy family . . .” He stated further that the Consolidated had not presented any demands for wage increases, but then said that whatever he would do would be handled through the Consolidated. He added that any wage increases granted would be retroactive to September 15, 1940. Finally, he said, according to the undenied testimony of Hulphers and Loy, which the Trial Examiner credited and which we credit, “Give me a chance to do something. Being you come (sic) up here for the chance, before you do anything, before you call the doctor in, maybe it is not the right ailment. Maybe you have got the wrong ailment. Maybe you won’t need the doctor.” It is clear from the testimony of these witnesses, and we find, that by the “doctor” Meyberg meant the Union. On October 3, 1940, Meyberg granted substantial wage increases of which the employees were apprised through notices sent by Meyberg to the Consolidated. On October 8, 1940, Meyberg met with the Directors of the Consolidated to learn whether the various divisions were satisfied with the wage increases. The minutes of this meeting reveal that, with regard to some employees who were dissatisfied, namely, Wilford, Casey, Bushing, and Cook, their grievances were disposed of by having Meyberg talk to them.

On several occasions the Consolidated furnished Meyberg with lists of employees not in good standing with the Consolidated. Although Meyberg denied having requested lists of delinquent members,

he admitted that he received such lists and stated that he used his own judgment in acting on them. The Consolidated informed delinquent members by letter that their names were being included on a list of "non-union members" which "goes to Mr. Meyberg each month" and that "any future lay-offs are to be chosen" from that list. On or about May 23, 1939, Hook received such a letter from the Consolidated. We credit, as did the Trial Examiner, Hook's undenied testimony that he went to Meyberg and asked whether the Consolidated had a closed-shop agreement and whether he would be laid off if he did not pay his dues. To both these questions Meyberg replied in the negative and then stated that "to keep harmony in the firm, it is better to join the union, the fifty cents a month doesn't break you . . . it is best to join, to keep paying your dues." Hook paid his dues and remained active in the Consolidated.

Jack Thrift testified that on October 10, 1940, he was asked by Hill, his foreman, whether he belonged to the Union; that when Thrift answered in the affirmative, Hill stated:

Well, that makes it sort of bad, Jack, because I intended to keep you on here. Now I don't know what to do about it . . . to my notion, the A.F. of L. and the C.I.O., all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C.S.U. [Consolidated] as well, they are taking care of you

here, whereas the dues you are paying into the A.F. of L. is doing you no good. We don't want the A.F. of L. in here or any other union.

Hill then asked him whether he could secure a withdrawal card and Thrift replied that he preferred to remain a union member. Hill was not called as a witness. The Trial Examiner found, and we find, that Hill made the statements attributed to him by Thrift.

On May 19, 1938, the Consolidated invited Meyberg and other representatives of the respondent to attend a picnic to be held on May 22, and asked Meyberg for the use of a company truck and for "any financial consideration that the firm would deem feasible." Meyberg granted the Consolidated the use of a truck, contributed \$10 toward the picnic, and paid a fine incurred by the driver of the truck. On July 30, 1938, the Consolidated held a "Weenie Roast" and the respondent again lent its truck. On September 7, 1938, the Consolidated wrote to Meyberg expressing thanks for "the help and cooperation you and the Germain Seed & Plant Company extended . . ." It also appears that Meyberg gave the Consolidated the use of the shipping floor in the warehouse for a dance held in October 1938.

In addition, the uncontradicted testimony of numerous witnesses establishes, and we find, that the Consolidated solicited members and customarily collected dues during working hours on the re-

spondent's premises; that notices of meetings were regularly posted over the time clocks in the various divisions; that the secretary of the Consolidated frequently advised the Board of Directors of meetings by use of the respondent's telephone during working hours; and that, on occasion, the Board of Directors of the Consolidated held meetings in the warehouse. Although the record establishes that the permission of the respondent was neither sought nor specifically given for these practices, and although on one occasion in the summer of 1940 Gates told Hook not to collect dues during working hours, it is clear, and we find, that the activities of the Consolidated in the plant were open and notorious and had the tacit consent of the respondent.<sup>13</sup>

### 3. Conclusions.

The Consolidated was formed immediately after the American Federation of Labor began to organize the respondent's employees in August 1937. It was brought into being by Sage and various other supervisors and representatives of the respondent. Sage called the initial meeting, which was held in the plant, to discuss the formation of an "independent" union; he admitted that he told those present

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(13) Contrary to the contention advanced by the respondent, there is no substantial evidence that organizational activities on behalf of the Union took place in the plant during working hours on a scale in any way comparable to those of the Consolidated described herein.

at the meeting that certain employees had "expressed . . . a desire to have a union of some kind" and that he suggested that "perhaps you would like to have a little independent union of your own." He then informed the meeting that Voorhees, an attorney, was experienced in organizing "independent" unions and that he would be glad to secure his services. About 2 weeks later, Sage held another meeting in the plant and introduced Voorhees who proceeded to speak on the advantages of "independent" over "outside" unions. Subsequently Voorhees arranged for the incorporation of the Consolidated. With the Consolidated well established, Sage withdrew when some employees questioned whether he could properly belong to the union in view of his supervisory or executive position with the respondent. Nevertheless, other supervisory officials continued thereafter to play an active part in the Consolidated.

Not only did the respondent form an "inside" union in the face of an organizing drive by the American Federation of Labor but, in addition, it openly indicated its hostility to "outside" unions. At the first meeting which Sage called, he advised employees that the respondent preferred a "house" union to an "outside" union and that Meyberg and Schoenfeld had plenty of money and could close the plant down at any time. Shortly thereafter, Meyberg distributed a "Statement of Facts" in which he emphasized that the employees "do not



have to join any labor union” or “pay dues, levies, [or] any kind of tribute to any organizer or group to hold your job.” He added that the respondent’s operations were carried on “in a spirit of friendly acquaintanceship,” that “there are no inaccessible bosses,” that “everyone knows everyone else,” and that “we like to feel that we work with, not against, each other.” Through this letter, delivered at a time when certain “accessible bosses” were busily engaged in organizing an “independent” union, the respondent made amply clear to its employees that it would not look with favor upon their affiliation with an “outside” union.

In September 1940, when certain employees became dissatisfied with the Consolidated and indicated that they might join an “outside” union, Meyberg treated the employees to dinner and then spoke to them about the unrest among them and urged that “we want to try to work all these things out among ourselves.” He then pleaded that the employees should give him “a chance to do something . . . before you call the doctor in.” He indicated at this meeting that he would grant a wage increase but that it would be handled through the Consolidated although he admitted that the Consolidated had not requested any wage increases. Subsequently, the respondent granted substantial wage increases of which employees were apprised by notices sent to the Consolidated. Although the Consolidated thereby achieved credit for the raises, it

had previously refused to press the demands of its members for a wage increase. The campaign which eventually induced the respondent to grant the increases was conducted not as a project of the Consolidated, but by the employees generally, both members and non-members of the Consolidated. The Consolidated, in fact, has been consistently reluctant to bargain with the respondent for concessions to which the respondent was opposed; on the other hand, it has always been amenable to the wishes of the respondent. Thus, the Consolidated continuously acquiesced in the respondent's unwillingness to enter into a written agreement.

In other ways, the respondent supported and assisted the Consolidated. In May 1939, Meyberg advised an employee to join the Consolidated "to keep harmony in the firm." In addition, the Consolidated conducted its activities in the plant and received other material benefits from the respondent. On the other hand, when Hill, a foreman, learned that one of the employees had joined the Union, he remarked that it was "sort of bad . . . because I intended to keep you on here," and then commented that the A.F. of L. and the C.I.O. were "a bunch of leeches," and that "we don't want the A.F. of L. in here or any other union." The Consolidated, he advised this employee, had been "taking care" of him.

We find that the respondent dominated and interfered with the formation and administration of the Consolidated and contributed support to it, and

that the respondent thereby, and by warning, advising, and urging its employees not to join or remain members of an "outside" union, by disparaging "outside" unions, by distributing the "Statement of Facts," described above, and by crediting Consolidated with a wage increase in the face of a threat by employees to join an "outside" union, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent has dominated and interfered with the formation and administration of the Consolidated and contributed financial and other support to it. In order to effec-

tuate the policies of the Act and free the employees of the respondent from such domination and interference, and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, we shall order the respondent to withdraw all recognition from the Consolidated as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of work, and completely to disestablish it as such representative.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

### CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, A.F. of L. and Consolidated Seedsmen's Union, Inc., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Consolidated Seedsmen's Union, Inc., and contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaran-

teed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc., or with the formation or administration of any other labor organization of its employees, and contributing financial or other support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) Recognizing Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;



(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work and completely disestablish Consolidated Seedsmen's Union, Inc., as such representative;

(b) Immediately post in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from

the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 31 day of Dec. 1941.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

GERARD D. REILLY

Member

(Seal) NATIONAL LABOR RELATIONS  
BOARD

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10082

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,  
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to  
the National Labor Relations Act (Act of July 5,

1935, 49 Stat. 449, c. 372, 29 U.S.C. §151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Germain Seed and Plant Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 595, AFL, Case No. C-1913."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, respondent's motion for continuance, Order postponing date of hearing and extending time for filing answers, respondent's motion to strike, respondent's demand for bill of particulars, respondent's motion to dismiss, respondent's answer to the complaint, hearing for the purpose of taking testi-

mony and receiving other evidence, intermediate report, respondent's exceptions to intermediate report, and order transferring case to the Board, the Board, on December 31, 1941, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Germain Seed and Plant Company, Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Consolidated Seedsmen's Union, Inc., or with the formation or administration of any other labor organization of its employees, and contributing financial or other support to Consolidated Seedsmen's Union, Inc., or to any other labor organization of its employees;

(b) Recognizing Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Consolidated Seedsmen's Union, Inc., as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work, and completely disestablish Consolidated Seedsmen's Union, Inc., as such representative;

(b) Immediately post in conspicuous places throughout its places of business in Los Angeles and Van Nuys, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;



(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On December 31, 1941, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Latham and Watkins, respondent's attorneys in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS  
BOARD

By ERNEST A. GROSS

Associate General Counsel

Dated at Washington, D. C., this 6th day of March 1942.

District of Columbia: ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS

Associate General Counsel

Subscribed and sworn to before me this 6th day of March 1942.

(Seal)

DANIEL T. GHENT, JR.,  
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

[Endorsed]: Filed Mar. 10, 1942. Paul P. O'Brien,  
Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT GERMAIN SEED  
AND PLANT COMPANY TO PETITION  
FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS  
BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Germain Seed and Plant Company, respondent  
in the above-entitled proceeding, in accordance with  
Section 10(e) of the National Labor Relations Act  
(49 Stat. 453, Chap. 372, 29 U. S. C. Section 160(e),  
approved July 5, 1935), answers the petition pre-  
sented to this Honorable Court for the enforcement  
of a certain order of the National Labor Relations  
Board, hereinafter referred to as the "Board."

In answer to said petition to this Honorable  
Court, respondent respectfully:

(1) Admits the allegations contained in  
paragraph (1) of said petition except that re-  
spondent denies that it committed any unfair  
labor practices as alleged in said paragraph;

(2) Admits the allegation in paragraph (2)  
of said petition that on December 31, 1941 the  
Board entered the order quoted in said para-  
graph, but denies for lack of information or  
belief all the other allegations in said para-  
graph;

(3) Admits the allegations contained in  
paragraph (3) of said petition;

(4) Denies for lack of information or belief the allegations contained in paragraph (4) of said petition.

In further answer to said petition, respondent respectfully alleges that the findings of fact of the Board upon which it based its conclusions of law and order are not supported by the evidence.

In further answer to said petition, respondent respectfully alleges that the Board acted without and in excess of its powers and contrary to law in making and entering its conclusions of law and order in this matter by reason of the lack of evidence in support thereof.

In further answer to said petition, respondent respectfully alleges that objection was made before the Board as to the lack of evidence to support the Board's proposed findings, conclusions of law, and order.

In further answer to said petition, respondent respectfully alleges that, assuming the findings of fact of the Board are supported by evidence, paragraph 1(c) of the Board's order is improper and beyond the power of the Board, and is in any event too broad.

Wherefore, respondent prays that this Honorable Court deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order of the Board in its entirety, or if such prayer be denied, that it set aside the said order of the Board in such part as the same

is not supported by evidence or is improper, and in so far as set aside that the Court relieve respondent, its officers, agents, successors, and assigns of any necessity to comply therewith.

Dated: March 25, 1942.

PAUL R. WATKINS,  
RICHARD W. LUND,

Attorneys for Respondent  
Germain Seed and Plant  
Company  
1112 Title Guarantee Building  
411 West Fifth Street  
Los Angeles, California

State of California,  
County of Los Angeles—ss.

Richard W. Lund, being duly sworn, says that he is one of the attorneys for respondent, and that he is authorized to and does make this verification on behalf of said respondent; that he has read the foregoing Answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

RICHARD W. LUND

Subscribed and sworn to before me this 25th day of March, 1942.

(Seal)                    ISOBEL V. HUGHES,  
Notary Public in and for said County and State.

[Endorsed]: Filed March 26, 1942. Paul P. O'Brien, Clerk.



[Title of Board and Cause.]

Room 808 United States Post Office and Court House Building, Spring, Temple and Main Streets, Los Angeles, California, Thursday, April 24, 1941.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before:

JAMES C. PARADISE, Trial Examiner.

Appearances:

JAMES A. COBEY, 808 United States Post Office and Court House Building, Los Angeles, California, appearing on behalf of the National Labor Relations Board.

MESSRS. LATHAM & WATKINS,

By PAUL R. WATKINS, 1112 Title Guarantee Building, Los Angeles, California, appearing on behalf of the respondent, Germain Seed and Plant Company. [1\*]

RALPH WOOLPERT, 1139 North Ontario Street, Burbank, California, appearing for International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, A. F. L. [2]

Trial Examiner Paradise: I believe that that leaves a motion to strike and a motion to dismiss and a motion for a bill of particulars to be ruled upon by me. Is that not so?

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\*Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Watkins. Yes, Mr. Examiner.

Trial Examiner Paradise: I have read the papers, gentlemen, and taking the motion to dismiss first, to the extent that the motion is based upon the claim that the third amended charge is not in accordance with the Rules and Regulations, the motion to dismiss is denied, but to the extent that the motion is predicated upon the claim that the respondent is not engaged in commerce within the meaning of the Act decision is reversed.

Now, regarding the demand for a bill of particulars, the motion for a bill is denied with the exception of items 11 and 12, which refer to paragraph 6 of the complaint. I will ask Board's counsel to examine the paragraph and to state whether he is in a position to further particularize the allegation in paragraph 6 which reads:

“by attempting in divers manners to persuade and coerce various of its employees” and so on.

That is an allegation which is unrelated to anything that precedes it and is, therefore, distinguishable from other [10] allegations in the complaint which refer to other acts of substantially similar nature and import. If Board's counsel cannot particularize the allegation in paragraph 6, the Trial Examiner would be inclined to grant the motion to strike it.

Mr. Cobey: Yes, that may be particularized. Would it be acceptable if it is an oral statement at this time?

Trial Examiner Paradise: It would be acceptable to me.

Mr. Watkins: No, we do not want an oral statement. We would like to have it in writing.

Trial Examiner Paradise: I will direct you then to prepare such a statement, referring to that allegation, by the time we reconvene this afternoon at 2:00 o'clock.

Mr. Cobey: All right.

Trial Examiner Paradise: In all other respects the motion for a bill is denied. Similarly, the motion to strike is denied, except with respect to items 4 and 5 of said motion, which refer to the same allegation in paragraph 6 of the complaint, and as to those portions of the motion the disposition will depend upon the compliance by the Board's counsel with the direction that he particularize that allegation in the complaint.

Mr. Watkins: If the Examiner please, I understand then as to the motion for a bill of particulars that 11 and 12 only are granted?

Trial Examiner Paradise: That is correct. [11]

Mr. Watkins: And 9, 10 and 13, which are of a similar nature, are denied? 9, 10 and 13?

Trial Examiner Paradise: That is correct. They are denied.

Mr. Watkins: I just want to say in that connection, Mr. Examiner, I believe from our motion it is probably clear to the Examiner that the purpose of our motion is so that we can be aware of what is sought to be proved here and that it will

not be a limitless clause which permits almost anything to come in. That is the basis of my motion and that is the basis of my question to the Examiner, because I felt 9, 10 and 13 were of a similar character to 11 and 12.

Trial Examiner Paradise: I thought I stated what appeared to be the difference between them. In any event, let me say this: If at any time during the course of the hearing proof should be adduced under those allegations, or as to substantially similar acts, with reference to which the respondent can justifiably claim surprise, the Examiner will be glad to entertain a motion for continuance at that time. [12]

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## BOARD EXHIBIT 2

[Title of Board and Cause.]

### STIPULATION

It is hereby stipulated and agreed by and between Germain Seed and Plant Co. and National Labor Relations Board, each through its undersigned counsel, that:

1. Germain Seed and Plant Co., a California corporation, hereinafter called "Respondent," having its principal offices and place of business at 747 Terminal Street, Los Angeles, California, is engaged in the growing, buying, refining and sale of seeds, bulbs, plants, nursery stock, insecticides, poultry and garden supplies and remedies, and hardware, etc.

2. In connection with the operation of this business, above described, Respondent operates a wholesale and warehouse department at 747 Terminal Street, Los Angeles, California, doing a general wholesale and retail business, a retail store at 625 South Hill Street, Los Angeles, California, a retail store and nursery near Van Nuys, California, a warehouse and wholesale and retail store in San Francisco, California, a retail store at Salinas, California, a retail store at Santa Maria, California, a warehouse at Fresno, California; and a bulb farm at Camarillo, California, which is devoted exclusively to the growing and harvesting of bulbs.

3. On October 31, 1940, the number of employees at the various locations above set forth were as follows:

Wholesale and warehouse, Los Angeles	119
Hill St. Los Angeles	17
Van Nuys	10
San Francisco	11
Salinas	3
Santa Maria	1
Fresno	4
Camarillo	11
	<hr/>
Total	176

4. During the calendar year January 1 through December 31, 1940, Respondent made purchases of various of the above-mentioned products amounting in value to approximately nine-hundred thousand



dollars (\$900,000). Approximately one hundred fifty thousand dollars (\$150,000) of these purchases, constituting roughly 17 per cent of them, originated at points outside of the State of California, including points located within the States of Missouri, Illinois, Idaho, Washington, Oregon, etc.

5. During the calendar year January 1 through December 31, 1940, Respondent sold various of the above-mentioned products amounting in value to approximately one million, five hundred thousand dollars, (\$1,500,000). Approximately three hundred sixty thousand dollars (\$360,000) of these sales, constituting 24 per cent of them, were shipped to points located outside of the State of California.

6. The introduction of this stipulation in evidence by counsel for the National Labor Relations Board at any hearing hereinafter held in this proceeding shall not preclude the introduction by any of the parties to this proceeding of any additional relevant and material evidence concerning the relationship between the operation of Respondent's business and the flow of trade, traffic and commerce among the various States of the United States and between those States and foreign countries.

GERMAIN SEED AND PLANT CO.

By PAUL R. WATKINS

Its Attorneys

NATIONAL LABOR RELATIONS  
BOARD

By JAMES A. COBEY

Its Attorney

Dated:

Mr. Cobey: At this time I would like to inquire whether counsel for the respondent would be willing to stipulate, in accordance with the admission made in its answer, that both the Consolidated Seedsmen's Union and the charging union in this proceeding are labor organizations within the meaning of the Act.

Mr. Watkins: I don't believe we need to stipulate if it is admitted in the answer. However, we will so stipulate.

Mr. Cobey: Yes. I would like also to inquire whether counsel for the respondent would be willing to stipulate that the correct name of the respondent is "Germain Seed and Plant Company" with the "and" being written out, and that all references to the respondent in the formal papers to the proceeding and hereafter made be corrected to so state the name of the respondent. [13]

Mr. Watkins: So stipulated.

Trial Examiner Paradise: Very well. The motion is granted.

Mr. Cobey: I should like to call Mr. Sage:

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WALTER P. SAGE,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

(Testimony of Walter P. Sage.)

The Witness: Walter P. Sage, S-a-g-e; 1351 North Coronado Street, Los Angeles, California.

Q. (By Mr. Cobey) Mr. Sage, you will understand that when I refer to Germain's, I am referring to the respondent in this proceeding, the Germain Seed and Plant Company?

A. Yes, sir. [14]

Q. Would you state whether or not you are at present employed by Germain's?

A. Yes, I am.

Q. How long have you been employed by Germain's?      A. Twenty-two years.

Q. Would you state what positions you have held with Germain's—      A. Yes.

Q. —and the time in which you held those positions?

A. Well, dating back to my going to work for them, I went to work as a shipping clerk, country shipping clerk, and I served in that capacity I think for about a year or a year and a half, and then I was given charge of that department, the entire shipping department.

I held that position about, I think it was about four years, and then I was made traffic manager and superintendent. I held that position for, I believe it was about—no, I would like to correct that. I would like to go back again on that.

I think the first, my first position was shipping clerk and I was in that position about a year when

(Testimony of Walter P. Sage.)

I was given charge of that department, and then I managed the shipping department for, I think it was, two years, and then was made traffic manager and superintendent.

Mr. Watkins: That is superintendent of what, may I ask? [15]

Mr. Cobey: Yes.

The Witness: That took in the order filling department and warehouse and the cleaning plant, and all of those people that were connected with that work. I served in that capacity, I believe it was, about 12 years, and then I was given a position as purchasing agent, and I have been in that capacity since that time and up to the present time.

Q. (By Mr. Cobey) Could you identify as to dates the period in which you held the position of superintendent and also the period in which you have been purchasing agent?

A. Well, I believe the dates would be hard to give you. It was in the —let me see. This is '41—about 1933 or 1934, in the spring of '33 or '34 I was given the purchasing agent's position.

Q. You were superintendent for about 12 years prior to that?

A. Prior to that time, that is correct.

Q. I see. Am I to understand that as superintendent you had charge of the entire warehouse or only a portion thereof?

A. Of the entire warehouse and order filling department, yes, sir.

(Testimony of Walter P. Sage.)

Q. I see. As purchasing agent, you are in charge of all purchases made by the company? Is that correct?

A. No, only in my department.

Q. What is that department?

A. Just the department handling insecticides and spray pumps [16] and miscellaneous items like that. I guess you would call it a sundries department.

Q. I see. Now, Mr. Sage, calling your attention to the latter part of August, 1937, can you recall whether or not at that time there was any talk among the employees about joining labor unions?

A. Yes. It came to me several times that there were some that felt they should be in an organization of some kind.

Q. How did that information come to you?

A. Well, it was expressed to me by different ones in a friendly way.

Q. Can you identify any of the individuals who so expressed themselves?

A. Yes, I think Mr.—I believe Mr. Nesbit was one of them. Let's see. I believe Mr. Hatfield mentioned it to me. It is pretty hard to remember how.

Q. Yes.

A. It is quite some time ago, but at that time there was quite a bit of organization going on throughout the entire city, and I know there was several times that different ones came to me and told me that there was union organizers that were



(Testimony of Walter P. Sage.)

downstairs and calling them together in little groups, and so forth, and they explained to me that they thought really maybe we should have an organization of some kind ourselves, that is, a union.

[17]

Q. Who explained that to you, Mr. Sage?

A. Well, I can't remember whether it was Mr. Nesbit, Mr. Hatfield or some of the other boys around there. I just don't remember quite who that was now.

Q. What action, if any, did you take in the matter?

A. Why, I asked them if they felt like they would like to have a union, why they didn't get together and form a union; the idea being this: Many years ago when I came to work for the company, we had at that time what was known as the Germain Improvement Association. It was anyone that worked for the company and was on the payroll had a right and automatically became a member of that. We had monthly meetings and I remember of attending many of them myself. We had a benefit fund that was contributed to by different ones. That fund was used for various purposes, and I had in mind some such organization as that, that could be formed again. It seemed to be a wonderful thing. It knit everybody together there that was working for the company and put them on what I thought was a very friendly basis, so when the matter was discussed further I asked

(Testimony of Walter P. Sage.)

them if they would like to have such an organization again, in the way of a union, and they said, yes, they thought they would.

Trial Examiner Paradise: Will you identify the people that you spoke to?

The Witness: The two that I have mentioned? These two [18] names? Oh, yes, I have known them for many years.

Trial Examiner Paradise: I know, but can you identify, can you name the persons to whom you stated or asked whether or not they desired to have an organization similar to the one that you had had before?

The Witness: Well, I believe it was these two gentlemen that I have mentioned, Mr. Nesbit and Mr. Hatfield. I am quite sure it was those two.

Q. (By Mr. Cobey) Do you recall any others?

A. I just don't remember who the others were. There is a great many down there and they are always talking to me about this and that and the other thing in a friendly way, and it is pretty hard for me to just single out any particular ones.

Q. Well, now, after these conversations that you have just testified to, did you or did you not call a meeting of the employees?

A. Yes. I asked them if they would like to get together in a meeting with me and discuss the thing further, and I did call them into a meeting.

Q. How was the meeting called?

(Testimony of Walter P. Sage.)

A. Oh, I just sent word around the building and asked them if they would care to enter into a meeting with me after work, Saturday afternoon, and talk the thing over, and they said they would. Whether they all attended——

Q. You say you sent word around the building. You just told [19] certain employees to tell the rest?

A. Yes, just by word of mouth and asked them if they would like to meet with me, and the answer came back, "Yes, be glad to."

Q. (By Mr. Cobey) Mr. Sage, how was notice of this meeting given?

A. Just by word of mouth.

Q. Just by word of mouth?

A. That's right.

Q. Did you or did you not tell certain employees to tell the other employees about this meeting? [20]

A. Yes. I told certain ones, but I don't recall who they were now.

Q. You say this meeting was held on a Saturday afternoon?

A. Yes, I believe that is true, that is was held on Saturday afternoon.

Q. Where was it held?

A. On the shipping floor.

Q. On the shipping floor?                   A. Yes.

Trial Examiner Paradise: Is this the shipping floor of the warehouse?

The Witness: Yes, that's right.

(Testimony of Walter P. Sage.)

Q. (By Mr. Cobey) How many employees attended that meeting?

A. Oh, that is really—I couldn't tell you. I don't know whether—they weren't all there, I know that, but there might have been as many as 15 or 20. I couldn't really truthfully answer that. I don't know.

Q. Were there both men and women at this meeting?

A. They were all men, as I recall it.

Q. All men?           A. Yes.

Q. Do you recall the time on Saturday afternoon at which the meeting took place?

Mr. Watkins: I object to that. It is incompetent, [21] irrelevant and immaterial. The witness testified it was after working hours. That is the material fact.

Trial Examiner Paradise: Overruled.

The Witness: No, I don't remember. It might have been half past one or two o'clock.

Q. (By Mr. Cobey) When was quitting time at that time?           A. It was 12:00 o'clock, I guess.

Q. 12:00 o'clock?           A. Yes, sir.

Q. You know a Mr. Hill at Germain's?

A. Yes, sir.

Q. Can you tell me what his duties were at this time, that is, August, 1937?

A. Yes. He was manager of the shipping department.

Q. Manager of the shipping department?

A. Yes.

(Testimony of Walter P. Sage.)

Q. Do you know Mr. Gates, who is employed by Germain's?      A. Yes, sir.

Q. Can you tell me what his duties were at this time?

A. Yes. He was manager of the warehouse and the mill room.

Q. Were either Mr. Gates or Mr. Hill present at this meeting?      A. At the meeting——

Q. The one as to which you have just been testifying?      A. Yes.

Q. They were both there? [22]      A. Yes.

Q. Do you know Mr. Allan Hook at Germain's?

A. Yes, sir.

Q. Can you tell me what his duties were at this time?

A. I believe he was running the seed cleaning machinery upstairs, under Mr. Gates' supervision.

Q. Now, do you know Mr. Hatfield?

A. Yes, sir.

Q. He is employed at Germain's?

A. Yes, sir.

Q. I believe you mentioned him and Mr. Nesbit?

A. Yes.

Q. And Mr. Luck?      A. Mr. Luck, yes.

Q. Were Mr. Hatfield, Mr. Hook, Mr. Nesbit and Mr. Luck at this meeting?

A. Yes, I am quite sure they were at that meeting. I wouldn't be sure about Mr. Luck,——

Q. I see.

A.——but I am quite sure the others were.



(Testimony of Walter P. Sage.)

Q. Now, can you tell me what happened at this meeting?

A. As near as I can remember, I will. I discussed with them at the time whether they thought they would like to have a union or an organization, whatever you want to call it—I don't believe—yes, "union," was mentioned—an independent [23] union of their own, and they all agreed at that meeting that that was the thing they would really like to do. So before the meeting was over they decided that they would like to have me bring someone in to organize them and incorporate them, and asked me if I could suggest someone, some legal man, to do that.

Well, prior to that meeting, I don't know now why or how, I happened to go to the Cudahy Packing Company, but I did go over there and had a talk with a gentleman over there. I don't remember his name either.

Q. Was his name David Stratton?

A. Yes, I think that was the name, and Mr. Stratton referred me to Mr. Voorhees.

Q. Had you known Mr. Stratton prior to this time?      A. No, I hadn't.

Q. How did you happen to go to him?

A. I don't know now. I tell you I couldn't answer that. I don't remember who sent me there or how I happened to hear of him, but there was quite a few little independent unions going on at the time, and someone referred me to Mr. Stratton,

(Testimony of Walter P. Sage.)

and they told me, I think, that they had such an organization there and that if I would go there I could get more information about it.

Q. You don't recall who that was?

A. I don't recall who that was. So he told me that he felt [24] that Mr. Voorhees could take care of the matter for us, and that is how I happened to get Mr. Voorhees.

Q. Now, at this meeting as to which you have just testified, you presided, didn't you

A. Yes.

Q. You were the only speaker?

A. Yes, I was the only speaker.

Q. Can you state more definitely what was said at that meeting?

A. Well, I can remember one part of it. I told them, I said, "several of you boys have come to me and told me that there were different union organizers coming into the plant talking to groups, and that you had expressed to me a desire to have a union of some kind," and I made the suggestion that, "Perhaps you would like to have a little independent union of your own." And they agreed that that was the thing they had in mind and the thing that they really wanted to do.

Now, regarding the rest of it——

Q. Well, Mr. Sage, did you or did you not back up your suggestion that perhaps what they would like to have was an independent union with any arguments in favor of an independent union?

(Testimony of Walter P. Sage.)

A. No, I didn't, because they seemed to agree, and they seemed to try to tell me that that is what they wanted. At least, that is what several of them suggested themselves, that [25] that is what they would like to have.

Q. Do you recall whether or not you made any mention of the names of Mr. Meyberg and Mr. Schoenfeld at that meeting?

A. No, their names were never mentioned.

Q. Would you mind stating just who Mr. Meyberg and Mr. Schoenfeld are and were at that time?

A. Mr. Meyberg is the president of our company, and Mr. Schoenfeld is our vice president.

Q. Now, that is all that you recall of what was said at that meeting?

A. That is all, yes, sir. The meeting really was—

Q. How long did it last?

A. Oh, I don't believe we were there over ten minutes; possibly fifteen at the outside.

Q. Now, I think you testified that the fellows at the meeting decided that an independent union was what they wanted?

A. Yes, sir.

Q. How was that decision reached?

A. Well, when I advanced the idea that that would suit our needs pretty well, they all seemed to sanction that and say yes, they thought that is what they wanted, they thought they wanted a union of some kind and the idea seemed to please them. seemed to be what they wanted.

(Testimony of Walter P. Sage.)

Q. What about Mr. Hatfield, Mr. Sage? Did he go along with that idea at that time? [26]

A. I don't recall whether he did or not. I don't remember whether Mr. Hatfield said anything or not.

Q. (By Mr. Cobey) Mr. Sage, after you contacted Mr. Stratton, as you said, and he recommended Mr. Voorhees to you, did you or did you not get in touch with Mr. Voorhees?

A. Yes, I did, after being asked—after being requested to get in touch with a legal man, I did get Mr. Voorhees.

Q. Do you happen to recall whether or not Mr. Voorhees came down to any meeting of the employees thereafter?

A. Yes. He attended a meeting at the—I believe it was on the shipping floor afterwards.

Q. On the shipping floor? A. Yes.

Q. Do you recall when that meeting was held?

A. No, I don't.

Q. Do you recall how long after this first meeting, as to which you have just testified, this second meeting which Mr. Voorhees attended was held?

A. It might have been two weeks or three. I just couldn't remember that; two or three weeks.

Q. Did you make the arrangements for Mr. Voorhees to come [27] down to the meeting?

A. I requested him to come down.

Q. Did you make the arrangements for the meeting?

(Testimony of Walter P. Sage.)

A. Yes, I did. I asked him to meet with us, I think. That was on a Saturday afternoon also. Yes, I am sure it was.

Q. How did you get word to the employees of this meeting?

A. The same way that I did the first time, just requested them by word of mouth, told them I would have Mr. Voorhees present there on Saturday afternoon, and they agreed that was all right and they attended that meeting.

Q. Was this meeting held at the same time on Saturday afternoon, roughly, as the previous meeting?      A. Yes, I would say about the same time.

Q. It was held in the shipping room of the warehouse?      A. That is right.

Q. How many employees were there?

A. Well, I couldn't say. It looked to me like practically all of them, I believe. There might have been an exception here or there. I couldn't answer that. [28]

Q. (By Mr. Cobey) Who presided at this second meeting?

A. I introduced Mr. Voorhees.

Q. Do you remember what you said when you introduced him?

A. I just merely told them that they had requested me to bring a legal man to them, and that I had done so, and wished to present Mr. Voorhees. That was about all I had to say.



(Testimony of Walter P. Sage.)

Q. I will ask you: Did Mr. Voorhees speak at this meeting?

A. Yes, Mr. Voorhees spoke at the meeting.

Q. Did anyone else speak?

A. I don't remember whether anyone else spoke at that meeting or not. That is a long time ago. I don't remember that.

Q. Do you have any recollection of what Mr. Voorhees said?

A. No. I really don't. I wouldn't like to have to answer that. I don't remember that either now.

Q. Can you tell us whether or not Mr. Hill or Mr. Gates were at this meeting?

A. Yes, they were.

Q. Can you tell us whether or not Mr. Hill or Mr. Gates took [29] any part in this meeting, besides attending?

A. No, sir, they did not. As I recall now, they were both dismissed from that meeting. Yes, they were dismissed from that meeting.

Q. Who dismissed them?

A. Mr. Voorhees.

Q. Mr. Voorhees?           A. Yes, sir.

Trial Examiner Paradise: Can you tell us how that happened, Mr. Witness?

The Witness: Yes, sir. I believe it was Mr. Hill asked a question of Mr. Voorhees regarding his—the line of work he was doing there, and Mr. Voorhees answered the question and told he and Mr. Gates both that they should not be present at that

(Testimony of Walter P. Sage.)

meeting, and as I remember it, they both walked out of the meeting right then and there.

Q. (By Mr. Cobey) Can you tell us whether or not Mr. Hatfield and Mr. Hook and Mr. Nesbit and Mr. Luck were there?

A. I am quite sure they were there. I don't remember about Mr. Luck so plainly, but I am quite sure Mr. Hatfield, Mr. Hook and Mr. Nesbit were at that meeting.

Q. How long did this meeting last?

A. I don't believe it was over half an hour. Maybe three-quarters of an hour at the outside.

Q. What part in the meeting did you take, aside from your [30] introduction of Mr. Voorhees?

A. None. Just was a good listener, that's all.

Q. In other words, after you introduced Mr. Voorhees, he took the meeting over?

A. That is right.

Q. I think you have testified that no one else spoke at this meeting, aside from Mr. Voorhees?

A. No, I don't remember that.

Q. Do you happen to recall whether or not Mr. Stratton was there?

A. It seems to me he was, but just to be sure now, I wouldn't like to say for sure. I think there was someone there with Mr. Voorhees; I am pretty sure.

Q. You don't recall anything else beyond what you have testified, as to what happened at that meeting—

A. No, sir.

(Testimony of Walter P. Sage.)

Q. ———or as to what was said?

A. No, sir, I don't. I really don't.

Q. Now, do you happen to know if after this meeting as to which you just testified there were any other meetings of the employees?

A. There was a meeting held, I believe, at the Hill Street store. You mean where Mr. Voorhees was present?

Q. No, I would just like to know whether, to your own knowledge, you know there were any other meetings? [31]

A. Oh, no, sir. I don't know of any others at all.

Q. You don't know of any others?

A. No, sir.

Q. There were no other meetings in which you participated? A. No.

Q. Are you familiar with the Consolidated Seedsmen's Union?

A. No, I am not, and the reason for that is because I was also told that I couldn't belong to the union.

Q. Who told you that? A. Mr. Voorhees.

Q. Mr. Voorhees?

A. Yes. He dismissed me immediately.

Q. Then am I to understand that following this introduction of Mr. Voorhees at this second meeting as to which you have testified, that your participation in this move to form an independent union ended at that point? Is that correct?

(Testimony of Walter P. Sage.)

A. It wasn't right at that point. There was a meeting held at the Hill Street store, and at that meeting was the meeting I was dismissed and told that the meeting was not even open until I left the premises, so I left.

Q. When did that meeting occur?

A. That might have been two weeks or three weeks after the shipping floor meeting. The shipping floor meeting, I believe, was just to introduce Mr. Voorhees, as a preliminary meeting was all, and then there was a meeting called at the [32] Hill Street store.

Q. You mean the Hill Street store of Germain's?

A. Yes.

Q. When was that meeting held?

A. I don't recall, but it seems to me it might have been two or three weeks after that.

Q. You are not sure about the lapse of time between these various meetings, of course?

A. No, I am not. I really am not, as it was at the Hill Street store meeting where I was dismissed.

Q. What was the time at which the Hill Street store meeting was held?

A. It might have been 7:30 or 8:00 in the evening.

Q. Do you remember how many employees were present?

A. I don't remember how many, but it seemed to me that most of the organization was there, and at that meeting the women were present.

(Testimony of Walter P. Sage.)

Q. I see. Now, am I to understand from your testimony that you were not present throughout the Hill Street store meeting?

A. Oh, no, sir. I wasn't permitted to stay. They didn't even open that meeting and I was told to leave immediately. I don't know what transpired at that meeting.

Q. Mr. Voorhees was the one who told you to go?

A. Yes, sir. [33]

Q. Do you happen to know whether anyone else besides yourself was excluded?

A. No, sir, I don't. I left the meeting. They told me to go.

Q. And that, to the best of your recollection, terminated your participation——

A. That is correct.

Q. ——in this move to form an independent union?      A. That's right.

Mr. Cobey: I suppose, Mr. Examiner, it will be understood when I refer to "Independent Union," I am referring to the Consolidated Seedsmen's Union and the move to form that union, and that my characterization of the union as "Independent" is not binding upon the Board.

Q. (By Mr. Cobey) What is your full name, Mr. Sage?      A. Walter P. Sage, S-a-g-e.

Q. You are certain that you had no further connection——      A. That is right.

Q. ——with this movement after that date?

A. Yes.



(Testimony of Walter P. Sage.)

Q. To refresh your recollection, I would like to show you this document, which I will ask to have marked as Board's Exhibit 3, for identification.

(The document referred to was marked Board's Exhibit 3, for identification.) [34]

Mr. Watkins: May I see it, Mr. Cobey?

Mr. Cobey: Yes, certainly.

(The document referred to was handed to counsel.)

Q. (By Mr. Cobey) I show you Board's Exhibit 3, for identification, and call your attention to the name, "W. P. Sage." Does that refresh your recollection at all? Will you examine Board's Exhibit 3, for identification, please?

(Handing document to witness.)

Mr. Watkins: I object to the question as being argumentative and assuming facts not in evidence. There is no indication yet of the date of this particular agreement, or as being in any way contrary to the testimony the witness has given.

Trial Examiner Paradise: Overruled.

The Witness: You mean that—I don't quite understand this. Would you mind explaining it to me? You mean——

Q. (By Mr. Cobey) Board's Exhibit 3, for identification, purports to be a preorganization agreement of certain employees of the Germain Seed and Plant Company. Now, at the bottom of this agreement, and also being a part of Board's Exhibit

(Testimony of Walter P. Sage.)

3, for identification, there is a list of typewritten names headed by the word "signatures." Among the signatures there is the name, "W. P. Sage." I wondered whether that refreshed your recollection.

A. You mean where I became a member or joined or paid a fee, or something like that? [35]

Q. Well, Board's Exhibit 3, for identification, would indicate that this preorganization agreement was signed by the persons whose signatures are typewritten below.

A. I don't believe I ever signed anything like that.

Trial Examiner Paradise: Is the question you are now addressing to the witness or is the paper which you are showing the witness to refresh his recollection as to the time when he severed his connection with the independent union movement?

Mr. Cobey: Yes, as to the time.

Trial Examiner Paradise: Now, Mr. Witness, can you answer that question: Does that paper refresh your recollection as to the date when you severed your relationship with this independent movement?

The Witness: No, sir, it doesn't. No, it doesn't.

Q. (By Mr. Cobey) Do you happen to know, Mr. Sage, whether there are any other persons by the name of Sage or were there any other persons by the name of Sage in the employ of Germain's during the fall of 1937?

A. Not to my knowledge. I am the only one.

(Testimony of Walter P. Sage.)

Q. There was no other W. P. Sage besides yourself?  
A. No, sir.

Mr. Cobey: That is all.

Trial Examiner Paradise: As I understand the witness' testimony, Mr. Cobey, he hasn't denied having signed a paper [36] similar to that. I don't believe that specific question was put to him, as a matter of fact. All he was asked was whether his recollection was refreshed by looking at that paper.

Mr. Cobey: Yes, that is right.

Q. (By Mr. Cobey) I will put to you that question: Do you recall signing any paper similar to Board's Exhibit 3, for identification?

A. No, I don't remember signing any paper like that.

Q. But, to your knowledge, you are the only W. P. Sage that was in the employ of the company at that time?  
A. Yes, that is right.

Q. Now, during this period as to which you have just been testifying, which period ran, roughly, would you say, from the latter part of August, 1937, to early September, 1937? Do you have any recollection on that point?

A. No, I don't remember that either. I don't know how long ago this was started. Let me see. I don't recall how long the—how long ago it was now.

Q. But I understand from your testimony that during that period you had certain discussions with the employees about this question?

A. In the beginning.

(Testimony of Walter P. Sage.)

Q. In the beginning?

A. Very few discussions with them.

Q. Where did those discussions take place? [37]

A. Oh, perhaps when I was going out to my lunch I would meet one or the other of them in the doorway, and they would say some little thing to me about the matter, or maybe in the morning when I would come to work one of them might say some little thing about it. But there was very little discussion about it until that first meeting, and then I asked them if they wanted to meet with me about it. I said, "You fellows keep running to me about this thing. Now, you must want to do something about it. Now, would you care to meet with me and let us discuss this thing and see what you have on your mind."

They said they would. They said they were waiting for someone to get them together and have a talk with them.

Q. Do you recall whether or not any of these discussions you had with them took place during working hours?

A. No. No, there wasn't any during working hours, as I remember.

Q. At that time you had no occasion to walk throughout the plant in the course of your duties?

A. Oh, no. No, my present position holds me pretty close to my office, and to my desk. I don't get around very much.

Q. So it is your testimony that these discussions took place on the way to lunch?

(Testimony of Walter P. Sage.)

A. Or in the morning.

Q. Or in the morning when you came to work?

[38]

A. Or in the evening when I would leave someone might say a little something to me about it.

Q. These discussions took place down at the warehouse, didn't they?

A. Yes, they did.

Q. Now, do you recall whether or not during any of these discussions you engaged in arguments as to the relative merits of an independent union and an outside union?

A. Oh, no. There was never any argument at any time.

Q. No argument at any time?

A. No, a very friendly discussion all the way through.

Q. (By Mr. Cobey) Mr. Sage, I think you testified that at the first of these meetings of these employees that were there, some of them asked you how they should go about forming such a union and also about the incorporation of such a union. Is that correct? [39]

A. That's right.

Q. Do you recall whether or not you talked to them about incorporation?

A. No, I didn't. I didn't, because I wouldn't be qualified to talk on a subject like that. I know absolutely nothing about incorporating.

Q. But you remember that they asked you about incorporation?



(Testimony of Walter P. Sage.)

A. They said that they wanted to form the union, and I said, "Well, I think then you should have a legal man to do that for you."

And they asked me if I knew of anyone, and I told them I did through what Mr. Stratton told me about Mr. Voorhees, and that I would be glad to get a man for them if they wanted one.

Q. But you can't recall who referred you to Mr. Stratton?

A. No, sir. That is something I don't remember now. I wish I did.

Q. Mr. Sage, do you recall whether or not during this period as to which you have been testifying there was any general meeting of the department heads of Germain's?      A. No, there wasn't.

Q. There wasn't any general meeting?

A. No, sir.

Q. You were never called into consultation?

A. Absolutely not. The reason—— [40]

The Witness: (Continuing) ——I knew that there would never be any objection if we had our own Improvement Association back. It was always acceptable, and I knew that I would not be criticized if such an organization came back into being. I never discussed the matter at all with anyone outside of the employees themselves.

Q. (By Mr. Cobey) Will you tell us when the Germain Improvement Association existed?

A. Well, 22 years ago when I came to work for them, it was in existence then.

(Testimony of Walter P. Sage.)

Q. How long was it in existence?

A. It was in existence before I ever worked for them. So I understood after I became an employee myself.

Q. How long did it remain in existence after you went to work there? Do you recall?

A. That I don't recall now, but it was quite a long time [41] after I worked there that our meetings were still held.

Q. But is it your recollection that the Improvement Association had been dead for several years prior to this time? That is, for say ten years?

A. I don't even believe it is dead yet. There are a lot of them are members yet and talk about it.

Q. Well, are monthly meetings still being held?

A. No.

Q. When were they stopped?

A. That I don't recall now, how long ago it was.

Q. Would you say it was five years or ten years before this meeting?

A. Yes, it may have been. It may have been that long.

Q. You wouldn't know whether it was five or ten?

A. No. I just don't remember when the last meeting was held by the Improvement Association.

Cross Examination [42]

Q. (By Trial Examiner Paradise) Mr. Witness, what are your duties as purchasing agent?

(Testimony of Walter P. Sage.)

A. I buy merchandise for one of our departments, I keep a cost card system, check my invoices, interview sales people that come in my office, work on price structures. That's about all. [43]

Q. Do you have supervision over any employees?

A. No, sir.

Q. There is nobody working under you at all?

A. No, sir.

Q. What is your relationship, if any, to the workers in the warehouse?

A. Well, they recognize that I am purchasing for that department, and it is just merely cooperation between us, telling me when stocks are low and when I should replenish by further purchases, and things of that kind, giving me stock reports.

Q. Do you have any authority over any of the employees in the warehouse?      A. No, sir, none.

Q. None with respect to either hiring or discharging them?      A. No, sir.

Q. Or with respect to controlling work that they do?

A. No, I don't control the work they do; only in a cooperative way, that is all.

Q. What do you mean by that?

A. Well, if I ask them if we are low on a certain line that I am carrying, they will give me back a stock report, that is all. They wouldn't have to, if they didn't want to. I have no authority over them.

Trial Examiner Paradise: I have nothing further. [44]

(Testimony of Walter P. Sage.)

Q. (By Mr. Watkins) Just two questions in connection with the questions asked you by the Examiner. When you refer to the warehouse and your connection with it, that is only a part of the warehouse operation, is it not?      A. That is true.

Q. The second question is: Is your answer the same, which you gave to the Examiner's questions about any supervision you might have or connection with employees,—is it the same for the period under discussion, that is, the fall of 1937?

A. That is correct.

Mr. Watkins: That is all.

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J. P. VOORHEES,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and [45] address, please?

The Witness: J. P. Voorhees, 5338 Crenshaw Boulevard, Los Angeles.

Trial Examiner Paradise: How do you spell the name, please?

The Witness: Voorhees, V-o-o-r-h-e-e-s.

Trial Examiner Paradise: All right.

Q. By Mr. Cobey) Mr. Voorhees, you are a practicing attorney locally?      A. That is right.

(Testimony of J. P. Voorhees.)

Q. You were a practicing attorney during the fall of 1937?           A. I was.

Q. Now, you were in the court room here during the testimony of Mr. Sage?           A. I was.

Q. You heard that testimony?           A. I did.

Q. Do you recall the circumstances under which Mr. Sage got in touch with you?

A. I do not, no.

Q. Do you recall that he was the person that got in touch with you in connection with this Germain situation?

A. I have no definite recollection of it, but from his testimony on the stand I would say that he is correct; that he either called me or came to see me, I wouldn't know which. I [46] think he called me.

Q. Do you recall this meeting as to which he testified that you were present and spoke?

A. You mean the meeting at the warehouse?

Q. Yes.           A. Yes, I remember that.

Q. Do you remember what you said at that time?

A. In general, yes. Specifically, no.

Q. Well, what was the substance of what you said?

A. The substance of what I said was that the employees had a right to form or join any union that they pleased, without the employer having any voice in the matter, and that they had a right to belong to any organization that they might desire, that they could form an independent union if they



(Testimony of J. P. Voorhees.)

wished and that there were some independent unions in Los Angeles at that time; and that the dues in an independent union were considerably smaller than the dues in other unions, and that they would be able to control and operate their union without the aid of any business agent or outside help, and that if they would form such an independent union, I would advise them to form under the non-profit corporation laws of this state, so that none of them would be personally liable for any of the debts of the organization or any liabilities of the organization.

Q. Is that all you said, as you recall, or the substance of [47] what you said?

A. Well, I believe that my memory was refreshed by the testimony of this last witness. I believe I told them that the only persons eligible to belong to a union were the workers, and that those who had the right to hire or fire or discipline employees, or who were in executive positions, did not have the right to belong to any union. And I believe that someone at that time did define his duties to me, and I informed him that he was not eligible to belong to the union and should not participate in that meeting. I have just a hazy recollection of that, which was refreshed entirely from this last witness' testimony.

Q. Do you recall whether or not you were the only speaker at this meeting?

(Testimony of J. P. Voorhees.)

A. On that point I also have a hazy recollection, and I would say, with qualifications, without being certain, that Mr. Stratton was present and spoke. What he said I have no recollection at all.

Q. Can you identify Mr. Stratton any further, as to the position he held at that time?

A. Mr. Stratton at that time was the secretary and business agent of the independent union at the Cudahy Packing plant.

Q. You don't recall what Mr. Stratton said?

A. I do not.

Q. Do you recall anything of what he said? [48]

A. Very hazily. I think he told them something about the way in which the independent union at Cudahy's was being operated.

Q. Mr. Voorhees, do you recall anything of the Hill Street store meeting, which was referred to in the testimony of Mr. Sage.

A. Yes. The Hill Street store meeting was called after the articles of incorporation had been signed and sent to Sacramento and were returned, and I believe after the by-laws had been adopted by the incorporators, and was called for the purpose of explaining to the employees what had been done by the incorporators and to let them determine whether they wished to become members of the organization, to explain to them the by laws and to permit them to decide whether they wished to join.

I recall that someone in the group—at that time

(Testimony of J. P. Voorhees.)

there were far more employees present than were present at the meeting in the warehouse—and at that time someone asked the same question, as to who was eligible to belong to the union, and I gave them the same answer, that a person who had the right to hire or fire or to discipline employees or who was in an executive position could not belong to the union. And several of them, I believe, contended that Mr. Sage was in that position, and I stated that since they felt he was in that position or occupied some position of that character, that he had no right in the meeting whatsoever, and I asked him to leave the meeting [49] and leave the building, I believe.

Q. Do you recall whether or not you excluded anyone else?

A. I don't know that I did, but I can't recall positively. It seems to me that there was one other person who placed himself or who thought he might be in that category; one or two others. Now, I can't remember.

Q. Do you recall who presided at this Hill Street store meeting?

A. Well, Mr. Sage introduced me and I started explaining the articles and by-laws, and then someone raised this question. I believe one of the incorporators presided.

Q. Mr. Frauenberger?

A. Well, I say yes, with qualifications. I can't remember his name, but someone——

(Testimony of J. P. Voorhees.)

Q. Do you recall what he looked like?

A. No, I don't.

Q. Mr. Voorhees, do you recall whether or not at the conclusion of this Hill Street store meeting an election was held?

A. I don't recall of any election being held. It seems to me that there was a motion of some sort to accept the by-laws or to approve the by-laws and to become members of the organization.

Q. You don't remember whether or not there was any election?

A. Of officers, do you mean?

Q. No, of accepting the union. [50]

A. Well, as I say, I think there was a motion—

Q. Yes.

A. —to the effect that the acts of the incorporators be approved, and that the by-laws be approved, and that they become members of the organization. I think the minutes would speak for themselves. At least, they should. There should be a record there, should be minutes of that meeting. In fact, I think I found the minutes a moment ago when I was looking in the minute book.

Q. (By Mr. Cobey) Mr. Voorhees, am I to understand that you acted as attorney for this union throughout the period of its establishment? In other words, you handled the legal end of the setting up of this union?

A. Well, your question isn't quite clear. What

(Testimony of J. P. Voorhees.)

I think you mean is this: Was I retained by them all of the time?

Q. Yes.

A. No, I was not. I was employed to draw up their articles of incorporation and their by-laws, and to explain the by-laws and the articles, and on two or three occasions thereafter [51] some officer or director of the corporation talked with me. I believe on one occasion or two occasions the Board of Directors came to my office and consulted with me. I did not consider I was retained as their attorney. They, as occasion required, saw fit to consult with me further.

Q. Well, did you or did you not draft the articles and the by-laws for the union?      A. Oh, yes.

Q. And the other organizational documents?

A. Well, what do you mean by "other organizational documents"?

Q. Well, I show you Board's Exhibit 3, for identification, headed "Preorganization agreement." Do you recall whether or not you drafted that?

A. I believe that I did. I believe that I drafted the portion appearing above the signatures. [52]



## BOARD EXHIBIT 3

Copied from minute book of Consolidated Seedsman's Union, proofread by Gladys Van Sickle, April 17, 1941.

## PRE-ORGANIZATION AGREEMENT

We, the undersigned, employees of the Germain Seed & Plant Company, desire to form an independent union, for the purpose of dealing with our employer under the provisions of the National Labor Act, known as the Wagner Act, and we do hereby appoint W. S. Clark, Harold Frauenberger, Dorothy Turton, K. R. Luck, A. Hook, H. B. Orr, and Morris Stearn as a committee to formulate an independent union for us and to represent us with our employer under the provisions of the National Labor Relations Act known as the Wagner Act.

Each of the undersigned has or will pay \$1.00 as Initiation Fee for membership in the union, and 50¢ a month as dues commencing one month after becoming a member.

## SIGNATURES:

Ramon Magdaleno	L. Poor	C. L. Van Doren
Denver Hysell	Harry Fenster	C. C. Fitzgerald
Amos S. Kays	A. W. Huskins	Dorothy Turton
Theodore Schrader	Blanche L. Eaton	E. H. Bishop
Morris Stearn	Estella Gunter	C. Douglass
Erich Regan	Viola B. Gates	T. Tanabe
A. G. Russell	Myrtle Butterfield	W. P. Sage
Mary B. Martinez	Dean S. Westfall	A. Stanley Williams
Harry B. Orr	Charlotte Miller	Al Isleib
Lewis B. Williams	Fern A. Wingrove	C. C. Charles
Minnie Therese Sievers	Edna Hutchinson	Ella Saylor
A. Coleman	Justin Scharff	W. S. Clark

(Testimony of J. P. Voorhees.)

O. E. Johnson	Patrick J. Chavez	Stanley Watson
E. J. Porter	Josephine Cook	Charles F. Hill
T. Farley	Alice Hook	Louis Marquez
T. G. Harrison	Mary Ann Miller	Jack Butterfield
Ethel F. Durand	Iris Slafter	R. H. Montgomery
Louise Grow	Pearl Ewin	Bill Epperson
Converse	Erma Wright	Harold Frauenberger
Mary Court	Grace Wall	K. R. Luck
Cadd	Daisy Von Zell	Mae Molyneux
Eleanor Newmark	Grace Bland	Frances Fox
W. J. Smith	Otto Witt	M. Busching
E. Ganster	D. G. Hatfield	Virginia Bland
Leonard G. Wade	A. Hook	Cora V. Dempsey
Verna Newman	Edward G. Casey	Betty Anderson
V. J. Nesbit	A. Vanderveer	Florence May Siemsen
F. A. Wall Jr.	Evelyn Smead	L. Helen Martin
D. L. Cramsey	Ruth Dorothy Gray	Nyda Hansen
F. A. Wall	Marion Y. Otto	Emily Nelson
James Neal	J. H. Colbry	Corinne Harger
Roy O. Yoakum	Bob J. Kadous	Ida New
Paul D. Spence	Frank H. Miller	Marguerite L. Bailey
Alfred A. Freeman	Richard Kadous	Pearl Siemsen
Elizabeth Garnett	Eric G. Hulphers	Dorothy Davis

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#### BOARD EXHIBIT 4-A

#### ARTICLES OF INCORPORATION OF CONSOLIDATED SEEDSMAN'S UNION

Know All Men By These Presents:—

That we, the undersigned, citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a non-profit corporation under the general non-profit corporation law of the State of Cali-

(Testimony of J. P. Voorhees.)

fornia, being Title XII, Part IV, Division First of the Civil Code of the State of California.

We hereby certify:

First: That the name of said corporation shall be Consolidated Seedsman's Union.

Second: That the purposes for which said corporation is formed are:

(a) To deal with our employer Germain Seed and Plant Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment.

(b) To protect the interests and promote the general welfare of our fellow employees and ourselves.

(c) To do each and every other act necessary to carry out the purposes above set forth.

Third: That said corporation is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

Fourth: That the County in this State where the principal office for the transaction of the business of the corporation is to be located is the County of Los Angeles.

Fifth: That the number of directors of the corporation is seven (7) and the names and addresses of the persons who are appointed to act until the first annual meeting of the members of the corporation, or until the election and qualification of their successors are as follows, to-wit:

(Testimony of J. P. Voorhees.)

Names.	Residences.
Harold Frauenberger	1514 S. Berendo Street Los Angeles, California
Dorothy Turton	2415 12th Avenue Los Angeles, California
Allan Hook	9000 Mc Nerney Avenue Los Angeles, California
Morris Stearn	5901 Ethel Avenue Van Nuys, California
Harry B. Orr	1801 S. Chapel Avenue Alhambra, California
Richard Luck	210 W. 43rd Place Los Angeles, California
William S. Clark	1129 N. Cogswell Road El Monte, California

Sixth: Units of this corporation, to be known as Locals, may be established at such times and places as may be authorized by the Board of Directors.

Seventh: The number of directors, tenure of office and qualifications for office, may be changed from time to time by a duly adopted By-law or By-laws or by a duly adopted amendment or amendments to the By-laws.

(Testimony of J. P. Voorhees.)

In witness whereof, we have hereunto subscribed our names this 9th day of September, 1937.

HAROLD FRAUENBERGER  
DOROTHY TURTON  
ALLAN HOOK  
MORRIS STEARN  
HARRY B. ORR  
RICHARD LUCK  
WILLIAM S. CLARK

State of California,  
County of Los Angeles—ss.

On this 9th day of September, 1937, before me, J. P. Voorhees, a Notary Public in and for the County of Los Angeles, State of California personally appeared Harold Frauenberger, Dorothy Turton, Allan Hook, Morris Stearn, Harry B. Orr, Richard Luck, and William S. Clark personally known to me to be the persons named as directors in the within instrument and whose names are subscribed thereto, and severally acknowledge to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

J. P. VOORHEES

Notary Public in and for said County and State.

[Endorsed]: Filed Sep. 17, 1937. Secretary of State.



BOARD EXHIBIT 4-B

Copied from minute book of Consolidated Seedsman's Union. Proofread by Gladys Van Sickle, April 17, 1941.

MINUTES OF FIRST MEETING OF  
INCORPORATORS

The first meeting of the incorporators of the Consolidated Seedsman's Union was held at the offices of Voohees & Voorhees, 5325 Crenshaw Blvd., in Los Angeles, California, at 8 o'clock P.M. on the 20th day of September, 1937, in pursuant of the foregoing Call and Waiver of Notice.

Mr. Harold Frauenberger called the meeting to order and stated that it was called for the purpose of completing the organization of the Corporation and adopting By-Laws.

On motion duly made, seconded, and carried, Mr. Harold Frauenberger was elected Chairman of the meeting, and Dorothy Turton was elected Secretary of the meeting. Upon a rolleall being taken, it was found that three of the incorporators, namely Allan Hook, Harry B. Orr, and William S. Clark were absent. A motion was duly made, seconded, and carried that the persons present, namely Harold Frauenberger, Dorothy Turton, Morris Stearn, and Richard Luck, being a majority of the incorporators, proceed with the business of the meeting.

A certified copy of the Articles of Incorporation of said Corporation then being exhibited, on motion

(Testimony of J. P. Voorhees.)

duly made, seconded, and carried, said certified copy was duly accepted.

On motion duly made, seconded, and carried, the Directors named in the certified copy of the Articles of Incorporation were recognized as the first Directors of said Corporation.

A draft of By-Laws having previously been prepared, was then submitted for consideration. A motion was duly made, seconded, and carried that the By-Laws as drafted be adopted in the form appearing on the pages of this minute book, at the end of which appears the signatures of the incorporators present at this corporation meeting.

There being no further business before the meeting, by motion duly made, seconded, and carried, it was adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

Chairman

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#### BOARD EXHIBIT 4-C

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

#### MINUTES OF FIRST MEETING OF DIRECTORS

The first meeting of the Board of Directors of the Consolidated Seedsmen's Union was held at the

(Testimony of J. P. Voorhees.)

offices of Voorhees & Voorhees, 5325 Crenshaw Blvd., in Los Angeles, California, at 9 o'clock P.M. on the 20th day of September, 1937, in pursuant of the foregoing Call And Waiver Of Notice.

Harold Frauenberger was chosen as Temporary Chairman and Dorothy Turton was appointed as Temporary Secretary of the meeting.

On a rollcall of the Directors by the Secretary, the following were found to be present: Harold Frauenberger, Dorothy Turton, Richard Luck, and Morris Stearn. A quorum being present, on motion duly made, seconded, and carried, the Board proceeded to consider the resignations of three Directors, namely Allan Hook, Harry B. Orr, and William S. Clark. A motion was made, seconded, and carried that said resignations be accepted and their offices be declared vacant.

A motion was made, seconded, and carried that Thomas Farley, Harry Fenster, and D. G. Hatfield be elected as Directors to succeed the Directors whose resignations have been accepted, Thomas Farley to be the Director representing Division Four, Harry Fenster to be the Director representing Division Six, and D. G. Hatfield to be the Director representing Division Three.

The resignation of Dorothy Turton as Director was read, and on motion duly made, seconded, and carried, said resignation was accepted and her office was declared vacant.

(Testimony of J. P. Voorhees.)

A motion was made, seconded, and carried that Blanche L. Eaton be elected as Director to succeed Dorothy Turton as Director, Blanche L. Eaton to be the Director representing Division Four.

Said newly elected Directors being then called into the meeting, were informed of their election and each accepted the office.

A motion was then made, seconded, and carried that the Board proceed with the election of officers of the corporation to serve for the ensuing corporation year and until the election and taking office of their successors.

The following officers were duly elected:

President—Harold Frauenberger

Vice-President—Thomas Farley

Secretary—Dorothy Turton

Treasurer—Dorothy Turton

It was moved, seconded, and carried that election of additional officers be deferred until a future meeting. The duly elected officers then proceeded to take their respective offices.

A form of application for membership was submitted and examined and motion was made, seconded, and carried that the proposed form be adopted and that a sufficient number to meet the requirements be printed.

Motion was duly made, seconded, and carried that the bank account of this Corporation be opened with

(Testimony of J. P. Voorhees.)

the Security First National Bank Branch at Seventh and Central Streets, Los Angeles, California.

Motion was duly made, seconded, and carried that the signatures of the President and Secretary be necessary on all warrants for the expenditure of any funds of the Union.

A motion was made, seconded, and carried that the membership certificate be in the form of a membership card, as provided in the By-Laws.

Motion was made, seconded, and carried that a Seal bearing the words "Consolidated Seedsmen's Union, Incorporated the 17th day of September, 1937, California", and identified by an impression thereof on the margin of this page, be and hereby is adopted as the Seal of this Corporation.

(Seal)

Motion was made, seconded, and carried that the Secretary be and hereby is ordered to file with the County Clerk of Los Angeles, California, a certified copy of the Articles of Incorporation for public record in accordance with the law.

Motion was made, seconded and carried that the address of the Secretary, namely 2415 Twelfth Avenue, Los Angeles, California, be used as the official address of this Corporation.

Secretary read a letter authorizing this Corporation to be exempted from the prepayment of Franchise Tax from the Franchise Tax Commis-



(Testimony of J. P. Voorhees.)

sioner of the State of California. This letter was ordered filed.

Motion was made, seconded, and carried that the Secretary be and hereby is directed to pay all expenses properly incurred in the organization of the Corporation, which are listed as follows:

Filing of Articles of Incorporation.....	\$11.00
Rent of Sons of Herman Hall Sept. 14th.....	4.00
Miscellaneous Stationery, Supplies, etc.....	4.80
Refund Initiation Fee to W. S. Clark.....	1.00
Refund Initiation Fee to O. E. Johnson.....	1.00
	<hr/>
Total.....	\$21.80

Motion was made, seconded, and carried that the following Application for Membership be approved.

\* .....

### Membership Application

in

### Consolidated Seedsmen's Union? Inc.

I hereby make application for membership in the Consolidated Seedsmen's Union, Inc, and I agree, if accepted as a member, to be bound by the Articles of Incorporation and By-Laws of the Union, and at all times to work for the best interests of the Union and the members thereof, and I hereby designate the Board of Directors of the Union as my exclusive repre-

(Testimony of J. P. Voorhees.)

representatives as to all matters referred to in the National Labor Relations Act.

.....  
Signature

.....  
Address

.....  
Telephone  
.....

There being no further business, on motion made, seconded, and carried, the meeting was adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

Chairman  
  
—————

#### BOARD EXHIBIT 4-D

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

#### MINUTES OF MEETING OF BOARD OF DIRECTORS

The meeting of the Board of Directors was called to order by the President, Harold Frauenberger, at 8:10 P. M., on September 28, 1937, at the offices of

(Testimony of J. P. Voorhees.)

Voorhees & Voorhees, 5325 Crenshaw Blvd., Los Angeles, California.

Rollcall showed all Directors present except Morris Stern.

The minutes of the previous meeting were read and approved.

A letter from Dorothy Turton resigning as Treasurer was read, and on motion duly made, seconded and carried, this resignation was accepted.

It was moved by Tom Farley and seconded by D. G. Hatfield that Viola B. Gates be unanimously elected as Financial Secretary and Treasurer. Motion was carried.

It was moved by D. G. Hatfield and seconded by Tom Farley that Blanche L. Eaton and Dorothy Turton be appointed as a committee to assist the Financial Secretary and Treasurer to establish a bookkeeping system for this Union. Motion was carried.

The Treasurer asked if the bank account of this Union might be opened with the Bank of America, Branch at Seventh and Central, Los Angeles, instead of with the Security First National Bank as previously voted. It was moved by Tom Farley and seconded by Harry Fenster that the previous motion relative to the deposit of the funds of this Union in the bank be vacated, and that the funds of this Union be deposited in the Bank of America, Branch at Seventh and Central, Los Angeles. Motion was carried.

(Testimony of J. P. Voorhees.)

It was moved by Blanch L. Eaton and seconded by Harry Fenster that the type of bank account to be opened be left to the discretion of the Treasurer. Motion was carried.

There was considerable discussion regarding the purchase of buttons. It was then moved by Tom Farley and seconded by Harry Fenster that the suggested design as submitted by Harold Frauenberger be approved, new buttons to be secured for each month, the buttons for each month to be a different color. Motion was carried.

It was moved by R. Luck and seconded by D. G. Hatfield that a Corporation Seal, Pocket size, be purchased. Motion was carried.

The Secretary then read applications for membership from the following:

Frank H. Miller	Marguerite L. Bailey	F. A. Wall Jr.
Richard Kadous	Nida Crayton	D. L. Cramsey
Eric G. Hulphers	Thomas Farley	F. A. Wall
Louis Marquez	Thos. G. Harrison	James Neal
R. H. Montgomery	Leonard G. Wade	Roy O. Yoakum
W. A. Epperson	Charles Converse	Paul D. Spence
Harold Frauenberger	Mary Court Harrington	Alfred A. Freeman
Stanley Watson	Minnit T. Sievers	Patrick J. Chavez
K. R. Luck	Harry Fenster	Elizabeth Tarnett
Mae Molyneux	Ramon Magdaleno	Josephine Cook
M. Busching	A. G. Russell	Allan Hook
Cora V. Dempsey	Florence May Siemsen	Mary Ann Miller
Betty Anderson	Daisy Von Zell	Evelyn Smead
Nyda Hansen	Pearl Siemsen	Ruth Dorothy Gray
Emily Nelson	Verna Newman	Marion Y. Otto
Corinne Harger	Dorathy Davis	Mary B. Martinez
Ida New	V. J. Nesbit	Harry B. Orr

(Testimony of J. P. Voorhees.)

Lewis B. Williams	Blanche L. Eaton	E. H. Bishop
A. Coleman	Viola B. Gates	T. Tanabe
Denver Hysell	Myrtle Butterfield	Al Isleib
Amos S. Kays	Dean S. Westfall	C. C. Charles
Erich Regan	Fern A. Wingrove	Ella Saylor
Alice Hook	Edna Hutchinson	Charlotte Miller
D. G. Hatfield	C. L. Van Doren	C. Douglass
Edward G. Casey	A. Stanley Williams	Lucille Poor
A. Vanderveer	John W. Butterfield	Theodore Schrader
Bob J. Kadous	C. C. Fitzgerald	Morris Stearn
Charles F. Hill	Dorothy Turton	

On motion of Harry Fenster, seconded by R. Luck, these eighty-three applications were accepted. Motion was carried.

After considerable discussion, it was moved by R. Luck and seconded by Harry Fenster that membership cards bearing the following words be adopted.

Consolidated Seedsmen's Union, Inc.

Estb. Sept. 17, 1937

Los Angeles, California

This is to certify that.....has been admitted membership to the Consolidated Seedsmen's Union, Inc., and that this member is employed in some phase of the seedsmen's industry.

This card good until revoked.

.....  
Secretary

.....  
Signature

The motion was carried.



(Testimony of J. P. Voorhees.)

It was moved by R. Luck and seconded by D. G. Hatfield that \$25.00 be paid on account to Voorhees & Voorhees. Motion was carried.

Moved by Tom Farley and seconded by Blanche L. Eaton, that Dorothy Turton and Harold Frauenberger be reimbursed for one meeting each held in their respective homes to the extent of \$2.00 each. Motion was carried.

Moved by Harry Fenster and seconded by Blanche L. Eaton that \$2.00 be paid for each meeting held in a Director's home to the Director for Board Meetings. Motion was carried.

It was moved by Blanche L. Eaton and seconded by R. Luck that the following order of business be followed in all Board of Directors meetings.

Call meeting to order.

Rollcall.

Reading of Minutes of Previous Meeting.

Reports of Committees.

Applications for Membership.

Bills.

Unfinished Business on the Minutes.

Correspondence.

New Business.

Adjournment.

There being no further business to come before this meeting, by motion made, seconded, and carried, the meeting adjourned.

/s/ HAROLD FRAUENBERGER  
President

/s/ DOROTHY TURTON  
Secretary

(Testimony of J. P. Voorhees.)

BOARD EXHIBIT 4-E

Verified by Gladys Van Sickle on April 17, 1941.

BY-LAWS OF CONSOLIDATED  
SEEDSMEN'S UNION, INC.

ARTICLE I.

Membership

Applications for membership shall sign an application and agreement to be bound by the Articles of Incorporation and By-Laws, in the form prescribed by the Board of Directors, pay the entrance fee and dues prescribed by the By-Laws, and furnish such information as may be required by the Board of Directors. Such application shall be presented to the Board of Directors and acted upon within thirty (30) days from the time application is first made. During said thirty (30) day period, the Secretary may issue a temporary membership card to the applicant which will entitle applicant to such privileges as the Board of Directors may determine.

ARTICLE II.

Divisions and Departments

For the purpose of holding elections and in order that the members have proper and adequate representation, seven (7) divisions are hereby established. The Board of Directors shall establish as many departments in each division as may be necessary to

(Testimony of J. P. Voorhees.)

provide proper representation. The divisions and departments may be increased or decreased by the Board of Directors from time to time as may be necessary.

The following divisions are hereby established:

Division No. 1.—Traffic

Division No. 2.—Third Floor

Division No. 3.—Fourth, Fifth and Sixth Floors

Division No. 4.—Office

Division No. 5.—Hill Street Store

Division No. 6.—Main Street Store

Division No. 7.—Van Nuys Store

### ARTICLE III.

#### Members of Board of Directors and Department Representatives

One member of the Board of Directors, who must be a member of the division by which he is elected, shall be elected from each division by vote of the members of the division in the manner hereinafter provided.

One Department Representative, who must be a member of the department by which he is elected, shall be elected from each department by vote of the members in said department in the manner hereinafter provided.

The term of office of members of the Board of Directors and Department Representatives shall be one year, unless recalled, or until their successors

(Testimony of J. P. Voorhees.)

shall be elected and qualify. Terms in the respective divisions shall commence on the following dates:

Divisions 1, 3, 5, and 7 on July 1st of each year.

Divisions 2, 4, and 6 on January 1st of each year.

Until their successors shall have been elected and qualify, the following persons shall serve as members of the Board of Directors from their respective divisions:

Division 1.—Harold Frauenberger

Division 2.—Richard Luck

Division 3.—D. G. Hatfield

Division 4.—Blanche L. Eaton

Division 5.—Thomas Farley

Division 6.—Harry Fenster

Division 7.—Morris Stearn

#### ARTICLE VI.

##### Nominations and Elections, and Recall

1. Nominations and elections of members of the Board of Directors and Department Representatives shall be by secret ballot. The nominating or primary election in each division and departments thereof shall be held on a day fixed by the Board of Directors which shall be not more than thirty (30) nor less than twenty (20) days before the expiration of the terms of office in said division. The final election in each division and the departments thereof shall be held on a day fixed by the Board of Directors not more than fifteen (15) nor less

(Testimony of J. P. Voorhees.)

than five (5) days before the expiration of terms of office in said division.

2. Prior to the date fixed for the nominating or primary election in each division, the President shall appoint, subject to the approval of the Board of Directors, a committee to conduct the election in said division. The committee shall consist of three (3) members of the Union, none of whom shall be officers of the Union or any subdivision thereof, or members of the division in which the election is to be held. It shall be the duty of the committee to conduct the election, count the ballots, determine the hours during which the voting shall take place, determine eligibility of nominees and certify the name of the successful candidates as duly selected. The Secretary shall furnish to the election committee in each division a complete and accurate list of members in said division entitled to vote and to hold office. The Secretary shall give notice of election not less than five (5) days before the date set for each election by posting on the bulletin boards in the plant or by mail, as directed by the Board of Directors.

3. Special Elections: Special elections shall be held in the same manner as provided herein for regular elections, except that the Board of Directors shall have the power to fix the date of the primary election not less than two (2) days after notice thereof has been given and the date of the final



(Testimony of J. P. Voorhees.)

election not less than two (2) days after the primary election.

4. Manner of Holding Elections: Nominations. During the hours fixed for the primary election each member who is certified by the Secretary to be in good standing shall have the right to receive a blank ballot on which shall appear such information and instructions as may be necessary regarding the elections.

On this ballot the member shall *wire*, or may have written for him by one of the committee, the name of the person the member desires to nominate. Ballots shall be deposited in a locked ballot box, key to which shall be in possession of the Secretary. When the polls are declared closed, the Secretary shall open the box and the committee shall proceed to count the ballots. The two (2) persons eligible for the office receiving the highest number of votes for the office shall be declared nominated as candidates for said office. In the event more than two (2) persons receive the same number of votes, being the highest number, then all persons receiving said number shall be declared nominated. In the event one (1) person receives the highest number of votes and two (2) or more persons receive the second highest number of votes, then all persons receiving said second highest number shall be declared nominated in addition to the person receiving the highest number.

(Testimony of J. P. Voorhees.)

5. Final Elections: During the hours fixed for the final election, each member who is certified by the Secretary to be in good standing, shall have the right to receive a ballot on which shall appear the names of the nominees for each office to be filled, together with such information and instructions as may be necessary. The member may vote for one (1) of the nominees for each office by a cross opposite the name. Ballots shall be deposited in a locked ballot box, key to which shall be in possession of the Secretary. When the polls are declared closed, the Secretary shall open the ballot box and the committee shall proceed to count the ballots. The person eligible for the office, receiving the highest number of votes therefor, shall be declared elected to the office. In the event of a tie vote for any office, the Board of Directors shall, within five (5) days after the election, elect one (1) of the tied nominees to the office.

6. Recall: A referendum and special election shall be held on the question of recall of a member of the Board of Directors on the written request of ten (10) members of his division, or of a Department Representative, on the written request of five (5) members of his department. Upon such referendum and election the vote shall be first upon the question of recall and if affirmative a nominating vote shall be cast for the office on the same ballot. If the recall is carried, then a final election shall

(Testimony of J. P. Voorhees.)

thereafter be held as hereinabove provided. Such referendum and special election shall be held as soon as possible after requested as above set forth and upon such notice as the Board of Directors shall deem reasonable.

## ARTICLE V.

### Officers and Their Duties

1. Eligibility: Any member of the Union in good standing, who is an American citizen or who has made application for citizenship in the manner provided by law, and who is literate, shall be eligible to hold office in the Union.

2. Officers: The officers of the Union shall be a President, Vice-President, Secretary, Financial Secretary, Treasurer, Outside Guard, Inside Guard, and such other officers as the Assembly may from time to time decide upon.

3. All officers of the Union shall be elected by the Board of Directors at its regular monthly meeting in the month of April of each year and shall serve for one (1) year, or until removed as hereinafter provided, or until a successor shall have been elected and is ready to assume the duties of the office.

4. The President shall preside at all meetings of the Union and of the Board of Directors. As the Executive Head of the Union, he shall enforce its By-Laws, rules and regulations, and execute the

(Testimony of J. P. Voorhees.)

will of the Union and of the Board of Directors. He shall appoint, under the direction of, and subject to the approval of the Board of Directors, all committees not otherwise provided for.

5. The Vice-President shall, during the absence or disability of the President, exercise all the powers and discharge all the duties of the President until the President shall resume his duties or his successor be chosen.

6. The Secretary shall keep a complete and accurate record of proceedings at all meetings of the Union and of the Board of Directors. He shall conduct all correspondence under the direction of the President and the Board of Directors, and shall have custody of all correspondence, books, and records; shall keep a membership record; present applications for membership to Board of Directors; shall attest the signature of the President whenever attestation is necessary; and perform such other duties as are usually performed by a Secretary, or as he shall be directed to perform by the Board of Directors or the President; and he shall, upon ceasing to hold office, surrender to his successor in office, when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and other property of the Union under his control.

7. The Financial Secretary shall receive and give receipts for all monies payable to the Union.

(Testimony of J. P. Voorhees.)

He shall turn the same over to the Treasurer as soon as practicable after receiving the same, obtaining a receipt therefor from the Treasurer. He shall, whenever called upon by the President or other officers, or member of the Board of Directors or Union, render a full and detailed statement of all monies received by him and all monies due and payable to the Union, and if required to do so, the names of members delinquent in their dues or obligations to the Union. The Financial Secretary shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00). He shall perform such other duties as are usually performed by a Financial Secretary, or as he shall be directed to perform by the Board of Directors or the President. He shall upon ceasing to hold office, surrender to his successor in office, when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and property of the Union under his control.

8. The Treasurer shall receive and have custody of all monies and securities belonging to the Union under the direction of the Board of Directors and shall deposit the same in such bank or banks as the Board of Directors shall, by resolution, designate. The Treasurer shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00.). He shall make to the President, Board of Directors and the Union, reports relating



(Testimony of J. P. Voorhees.)

to the affairs of his office and the funds of the Union as often and in such manner as he may be directed, and perform such other duties as are usually performed by a Treasurer, or as he shall be directed to perform by the Board of Directors or the President. He shall, on ceasing to hold office, surrender to his successor in office, when qualified, or to such other person as the Board of Directors may designate, all monies, books, and other property of the Union under his control.

9. Financial Secretary and Treasurer: In the event the offices of Financial Secretary and Treasurer are combined and one person elected thereto, as Financial Secretary and Treasurer, he shall discharge all duties of the Financial Secretary and Treasurer, unless the Board of Directors shall otherwise direct, and such other duties as the President or Board of Directors shall from time to time authorize and direct. The Financial Secretary and Treasurer shall be placed under bond by the Board of Directors to the amount of Five Hundred Dollars (\$500.00). He shall, on ceasing to hold office, surrender to his successor in office when qualified, or to such person as shall be designated by the Board of Directors, all books, papers, and other property of the Union under his control.

10. The Outside Guard shall have charge of the outer door and shall preserve order in the ante-room.

(Testimony of J. P. Voorhees.)

The Inside Guard shall have charge of the inner door; attend all signals; receive and examine membership cards of members, and admit no one without a membership card showing current dues paid, except by direction of the President.

11. Any officer elected by the Board of Directors may be removed from office for neglect or refusal to perform his duties or for misconduct at any regular or special meeting of the Board of Directors. Notice of such contemplated action shall be given to such officer as the Board of Directors may direct. In case of temporary absence or disability of any officer, the position may be filled temporarily by the President or the Board of Directors. If any officer shall cease to be an employee of Germain Seed & Plant Company, the Board of Directors may in its discretion immediately declare his office vacant.

12. A vacancy caused by the death, resignation, or removal of any officer, or by his office being declared vacant as aforesaid, shall be filled for the unexpired term by the Board of Directors.

## ARTICLE VI.

### Board of Directors: Powers and Duties

1. The Board of Directors, consisting of one (1) member from each division as aforesaid, shall constitute the governing body of the Union. It may expend funds, and in general, do each and every thing or act which it may deem necessary in order

(Testimony of J. P. Voorhees.)

that the purposes, objects, business and affairs of the Union may be properly managed and conducted.

2. The Board of Directors shall hold regular meetings on the first Tuesday of each month for the transaction of all business and all other matters to come before it.

3. Special meetings of the Board of Directors may be called by the President or shall be called by the Secretary at the request of two (2) members of the Board of Directors at any time, and the Secretary shall give reasonable notice thereof to all members of the Board of Directors.

4. The members of the Board of Directors, together with whatever officers of the Union they may designate, shall constitute the Committee of Representation and shall be the exclusive representatives of all the employees of Germain Seed & Plant Company for the purpose of collective bargaining with said Germain Seed & Plant Company in respect to rates of pay, wages, hours of employment or other conditions of employment, but shall not have authority to enter into agreements with said company relative to all such matters without a majority vote of the membership; negotiations and conferences relating to said matters may be carried on by a committee or a representative appointed by the President, with the approval of the Board of Directors, for such purposes.

(Testimony of J. P. Voorhees.)

5. The Board of Directors may make, alter, amend or repeal the By-Laws, subject to the approval of the members of the Union. Any new By-Laws or alteration, amendment or repeal of existing By-Laws must be submitted, and any other matters the Board of Directors deems advisable may be submitted, to a referendum of the members of the Union. The question shall be stated in a form approved by the Board of Directors and may be accompanied by a brief summary of the arguments for and against the proposal. Balloting shall be conducted in the same manner as hereinabove prescribed for elections, by a committee appointed for the purpose, and majority vote of the members shall govern as to all matters so submitted. Any new By-Laws or alteration, amendment, or repeal of existing By-Laws proposed by a member must be submitted to a referendum of the members in the manner set forth above upon the written request of ten (10) members of the Union.

6. The Board of Directors may make such rules and regulations and other provisions for the government of itself, the officers elected by it and the members of the Union not provided for in these By-Laws and not inconsistent with them, as it may deem necessary in order that the purposes, objects, business and affairs of the Union be properly managed and conducted.

7. The Board of Directors shall have direct supervision over all expenditures of the Union. All



(Testimony of J. P. Voorhees.)

expenditures of funds, either by bank check or otherwise, shall be made only upon the signatures of two (2) officers who shall be designated by resolution of the Board of Directors. It shall annually cause all books and accounts to be audited by an auditor of recognized responsibility.

8. In the event of the temporary absence or disability of any Director, the Department Representative from his division shall take his place and discharge his duties and any action of a Department Representative so acting as Director shall have the same force and effect as if done by the Director.

9. If any member of the Board of Directors or Department Representative shall cease to be an employee of the Germain Seed & Plant Company, the Board of Directors may in its discretion immediately declare his office vacant. In the event of such vacancy or the death, disability or resignation of any member of the Board of Directors, the Department Representative of his division shall automatically become Director. In the event of any vacancy in the office of Department Representative, the vacancy shall be filled by appointment by the President of the Union, subject to the approval of the Board of Directors, and the person so appointed shall hold office until the next regular election in his department or division, unless recalled in the manner hereinabove set forth.



(Testimony of J. P. Voorhees.)

10. Quorum: Four (4) members of the Board of Directors, or Department Representatives acting as Directors, shall constitute a quorum for the transaction of all business of the Board of Directors.

11. Voting: Each Director shall be entitled to one (1) vote on any question coming before the Board of Directors. If the presiding officer is not a member of the Board of Directors, he shall not be entitled to vote. A majority vote of any question, proceeding, or matter before the Board of Directors shall govern.

## ARTICLE VII.

### Grievances and Complaints

Grievances and complaints of any member of the Union shall be submitted to his Department Representative. The Department Representative shall investigate and if in his discretion the matter should be heard, he shall submit it to the Board of Directors at any regular or special meeting thereof and the Board of Directors shall hear and consider the complaint and take such action regarding it as the members shall by majority vote determine. In the event the Department Representative shall fail or refuse to act on any complaints submitted to him, the aggrieved party may carry his grievance to the Director for his division, who shall take such action with regard thereto as he deems advisable.

(Testimony of J. P. Voorhees.)

If the Director shall also fail or refuse to act on the matter, the aggrieved party may present his grievances at any regular meeting of the Board of Directors, and the Board of Directors shall make its determination in the matter and shall take such action as is determined by majority vote.

### ARTICLE VIII.

#### Entrance Fee, Dues, Buttons, Etc.

1. Every person making application for membership shall pay an entrance fee of One Dollar (\$1.00), and if accepted as a member shall thereafter pay monthly dues at the rate of Fifty Cents (\$.50) per month.

2. A membership card and button shall be issued upon his acceptance as a member, which shall be evidence of his membership.

3. First monthly dues shall be due and payable on October 5, 1937, and thereafter dues shall be payable on the first (1st) day of each month. Upon payment of monthly dues, the Financial Secretary shall issue a new button so designated or colored as to distinguish it from buttons issued prior thereto.

4. Any member suspended, expelled or resigning must immediately surrender his membership card and button. It shall be considered an offense subversive of the interests of the Union for any member to give any other person his membership card and

(Testimony of J. P. Voorhees.)

button, or either, or to allow or permit any other person to use it.

5. The Board of Directors may from time to time increase or decrease the amount of the entrance fee and/or dues, and may provide special entrance fee and/or dues for temporary employees of Germain Seed & Plant Company.

## ARTICLE IX.

### Suspension and Expulsion of Members

1. Any member who shall fail to pay any dues as fixed by the Board of Directors within ten (10) days after the same shall become due shall be automatically suspended until said dues are paid, and shall for the period of suspension forfeit all the rights and privileges of membership in the Union.

2. The Board of Directors may suspend or expel and terminate the membership of any member for conduct which in its opinion disturbs the order, dignity, or harmony, or impairs the *goon* name, popularity or prosperity of the Union, or which is likely, in its opinion, to endanger the welfare, interest, or character of the Union or its members, or for any violation of any By-Laws of the Union or of any rules lawfully made by or under the authority of the Board of Directors or the members of the Union.

(Testimony of J. P. Voorhees.)

## ARTICLE X.

### Meetings of Members

The President or the Board of Directors may call a general meeting of members of the Union whenever he or they shall deem it advisable and shall give such notice thereof as shall be reasonable in the circumstances. The President shall call a general meeting of the members of the Union upon the written request of ten (10) members of the Union in good standing.

Quorum: Fifteen (15) members of the Union in good standing shall constitute a quorum for the transaction of business at any such meeting.

## ARTICLE XI.

### Amendments

1. The By-Laws of the Union may be altered, amended, or repealed, or new By-Laws enacted by a majority vote of the members present at a general meeting, provided that written notice of the proposed alteration, amendment, or repeal or new By-Laws shall have been given with the notice of such meeting.

We, the undersigned, do hereby approve and adopt the above and foregoing By-Laws of the Consolidated Seedsmen's Union, Inc.

Dated this 21st day of September, 1937.

(Testimony of J. P. Voorhees.)

Directors

MINNIE SIEVERS, Hill Street  
FERN WINGROVE, Office  
BETTEY ANDERSON, 3rd Floor  
JACK BUTTERFIELD,  
4th, 5th, 6th Floor  
BILL EPERSON, Shipping  
AMOS KAYS, Ranch  
STANLEY WATSON, President  
ERIC REGAN, Vice-President  
VIOLA GATES, Treasurer  
HAZEL BROWN, Secretary

Representatives

BILL LOEB  
VIOLET ASHLEY  
IRENE WALLACE  
HARRY HARTLINE  
FRANK MILLER  
LOUIE FENSTER

Original contained following:

HAROLD FRAUENBERGER  
K. R. LUCK  
DOROTHY TURTON  
WILLIAM S. CLARK  
A. HOOK  
MORRIS STEARN



(Testimony of J. P. Voorhees.)

Q. (By Mr. Cobey) Do you recall whether or not at any [55] time the Board of Directors of the Consolidated Seedmen's Union consulted with you as to the propriety, that is, the legal propriety or the legality of their submitting to the management a list of those employees at Germain's who were either not members or the Consolidated Seedmen's Union or who were members who were delinquent in their dues?

A. Yes I believe there was some discussion of that sort, and on one occasion when the Board of Directors or the officers came to my office.

Q. Do you recall whether or not you gave a written legal opinion upon that?

A. I cannot recall. I have no independent recollection.

Q. Do you recall whether or not the Board of Directors discussed with you the possibility of their attempting to obtain a closed shop? A. Yes.

Q. Do you recall when this occurred?

A. No, I don't recall the date.

Q. Can you tell us whether or not you were retained to conduct such negotiations?

A. At that particular time, at the time they discussed it with me—I wish we had the dates—it runs in my mind that it was on at least two occasions when the officers of the union discussed with me the question as to whether they should try to obtain a closed shop, and I do not recall being retained [56] for that specific purpose at that time, but recently,

(Testimony of J. P. Voorhees.)

prior to this hearing, I was retained to prepare a contract or the draft of a contract in which there was a paragraph which would constitute a closed shop. I recall advising them that, in my opinion, they should have a closed shop, if they could possibly get it, and that they would have a union that would operate more efficiently and more effectively and cause less disturbance and trouble among the employees if they did have a closed shop, and I recommended to them that they try to secure a closed shop.

Q. Did you take any further steps in that direction, after the preparation of the proposed contract?

A. No, I did not, other than to send a copy of it to the company, and that, as I remember it, was the first that I knew of this hearing, and nothing further was done after that.

Q. Did the company make written reply to your letter enclosing the proposed contract?

A. I don't recall that they did. I think I had a telephone call stating the matter had been referred to their attorney.

Q. I see. Then did you take the matter up with their attorney?

A. Well, at the same time or about the same time I learned of this hearing, and nothing further was done.

Q. Do you recall whether or not you sent that contract to the company around the first of this month? [57]

(Testimony of J. P. Voorhees.)

A. It could be. I don't recall the exact date. I knew that there had been an investigation, but I was under the impression that the investigator was satisfied that this independent union was a valid union, to use that expression, and that the Board was satisfied with this independent union, and for that reason, at the request of the board, I prepared——

Q. You mean at the request of the board of directors?

A. That is correct. (Continuing) ——I prepared this draft of an agreement, and submitted it to the company, and then, as soon as I learned that a complaint had been filed, which was after I sent the agreement to the company, I did nothing further about it. No one has ever notified me of any of these complaints until just very recently. [58]

Mr. Cobey: Mr. Examiner, in lieu of the amendment to the complaint which, by my own consent, I was requested to offer at this time, I should like to state that the Board will consent to the striking from the complaint in paragraph 6 of the following words: Starting on page 4 of the complaint within said paragraph, line 2, starting with the word "by" the words "by attempting" and striking all words up to and including the word "and" in the fourth line of page 4 of the complaint, all of this being within paragraph 6.

Mr. Watkins: Would you kindly read what is stricken?

(Testimony of J. P. Voorhees.)

Mr. Cobey: In other words, what would be stricken would be, "by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the union and."

Trial Examiner Paradise: In other words, the clause, as amended, would read: "through said Meyberg, Schoenfeld, Hill, Nesbit and others by uttering remarks disparaging to said union," and so forth. Is that correct?

Mr. Cobey: Yes.

Mr. Watkins: That doesn't entirely answer, does it, the Examiner's ruling with respect to the bill of particulars, because I thought there was something else in paragraph 6 to be [59] stricken.

Mr. Cobey: Well, it is my recollection that it does.

Trial Examiner Paradise: That would substantially comply with the ruling.

Mr. Watkins: As I understood it, Mr. Examiner, you ruled that paragraph 12 of the motion for a bill was also sustained, and paragraph 12 then would take out of this same paragraph the words—

Trial Examiner Paradise: No.

Mr. Watkins: Or, 11 would take out, "by uttering remarks disparaging to said union and by committing other acts of substantially similar nature and import."

Perhaps I misunderstood the Examiner.

(Testimony of J. P. Voorhees.)

Trial Examiner Paradise: You did not misunderstand. 12 was bracketed with 11, because obviously it refers, with 11, to the substantially similar acts, and so forth, and they are necessarily related to the allegations related in 11. Therefore, the two were bracketed by the Examiner.

I think that the clause now stricken by the Board of its own motion gets to the kernel of the allegation which the Examiner had in mind in referring to both paragraphs 11 and 12 of the motion. Accordingly, I would say that the ruling of the Examiner has been satisfied by the striking of that allegation.

Mr. Watkins: I see. Our exceptions to the Examiner's [60] rulings are automatically noted?

Trial Examiner Paradise: Yes, sir.

Mr. Cobey: Mr. Meyberg.

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MANFRED MEYBERG,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and address?

The Witness: Manfred Meyberg; M-a-n-f-r-e-d M-e-y-b-e-r-g; 1041 Copa De Ora Road, West Los Angeles.



(Testimony of Manfred Meyberg.)

Q. (By Mr. Cobey) You are the president of Germain's? A. I am.

Q. How long have you held that position? [61]

A. Oh, approximately fifteen years.

Q. Do you have an employee, that is, does the company have an employee by the name of W. S. Clark? A. Yes.

Q. Was he employed by the company in the fall of 1937, that is, in August and September of 1937?

A. I would say he was. Yes, I think he was.

Q. Do you recall what the nature of his duties were at that time?

A. He had something to do with the nursery.

Q. You don't know what he had to do with it?

A. I think he was—he had charge of the nursery department of the retail store.

Q. Which retail store?

A. At 625 South Hill.

Q. Which has been referred to as the Hill Street store in this proceeding? A. Correct.

Q. Now, calling your attention, Mr. Meyberg, to the period of August and September of 1937, do you happen to know whether or not at that time there was any talk among the employees at Germain's in regard to labor unions?

A. Yes, I did know that.

Q. What is the basis of your knowledge?

A. Well, to go back quite a ways, I have been in the Germain [62] Seed Company for some 37 years, and there are employees around there that

(Testimony of Manfred Meyberg.)

have been there nearly as long as I have, and we have grown up together. Problems of the firm are mutual, and in every organization, you know, there is a lot of gossiping going on, and through gossip, and so forth, I learned about it.

Q. Now, do you recall whether or not during this particular period you called any meeting of your department heads within the warehouse?

A. No, I wouldn't know that. We always have meetings, however, of the department heads, so I might say I might have had meeting at that time.

Q. But you do not recall any particular meeting?

A. No, I do not.

Q. No particular meeting with regard to this situation about the employees talking about unions?

A. Not that I remember.

Q. (By Mr. Cobey) Mr. Meyberg, I hand you for your inspection Board's Exhibit 5, for identification, and I ask you whether or not you have seen it before?

A. Something of that sort. Probably it was the same thing. I have seen a paper of that kind. [63]

Q. When did you see a paper of that nature before?

A. When I copied it, made a copy of a record I had and sent it up here to the Labor Relations Board, and I originally had it and passed it out—had it passed out to employees at a time when I understood there was going to be a meeting of the employees.

(Testimony of Manfred Meyberg.)

Q. I understand then that Board's Exhibit 5, for identification, is a copy which was prepared, under your direction,—— A. Correct.

Q. —of this notice that you distributed to your employees? Is that correct? A. Correct.

Q. Can you tell us about when that distribution of the notice took place?

A. I wouldn't be able to do that, but I can only say it was a time when I understood there was to be a meeting of the employees.

Q. I see.

A. It was during that period. I don't remember exactly the time.

Q. Were you in the court room at the time Mr. Sage and Mr. Voorhees testified? A. Yes.

Q. Do you recall that this notice was distributed during the period of those meetings to which they testified? [64]

A. One of those meetings. Which one, I don't remember.

Q. I see. How was it distributed? Do you recall how it was distributed?

A. I think we handed it out to the employees as they left the building that evening of the meeting.

Q. I see.

A. (Continuing) But I don't remember exactly.

(Testimony of Manfred Meyberg.)

BOARD EXHIBIT 5.

A STATEMENT OF FACTS.

Because of many stories and rumors that are being circulated and believing that those with whom we have worked side by side have confidence in their employers and will welcome comment from time to time on matters of vital interest to our business and our jobs, we wish to say that:

This business believes in the American right of every man and woman to work without coercion, or intimidation of any sort. In support of this principle we believe in the open shop and, in justice to all, we are opposed to any form of closed shop agreement.

You do not have to join any labor union or organization in order to hold your job. The law does not require it. This business does not require it.

You do not have to pay dues, levies, nor any kind of tribute to any organizer or group to hold your job.

You do not have to belong to any organization to get wage increases or enjoy shorter hours. Whenever these benefits are possible they are made to those who do not belong to any organization just the same as to those who do.

You do not have to be a member of any organization. Likewise, you are at liberty to join any lawful organization.

(Testimony of Manfred Meyberg.)

This business takes pride in the high type of its personnel and the friends they have made of thousands of customers.

It is a pleasant relationship that should be continued for the best interests both of employes, and of customers, who after all are our real employers, whether our job happens to be selling, marketing or delivering merchandise, or planning and managing the many activities involved in modern business.

We have steady employment. Our operations are all carried on in a spirit of friendly acquaintance-ship, in close contact with each other and with the public.

There are no inaccessible "bosses". Everyone knows everyone else. We like to feel that we work with, not against, each other. We want to meet each day in that spirit.

GERMAIN SEED & PLANT CO.  
MANFRED MEYBERG,  
President.

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Q. (By Mr. Cobey) Mr. Meyberg, I call to your attention the second paragraph in Board's Exhibit 5. Are you still opposed to the closed shop? [65]

The Witness: Yes.

Q. (By Mr. Cobey) And you have remained continually opposed since that time?

The Witness: Yes. [67]



VIOLA V. GATES,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please, in a loud voice.

The Witness: Viola V. Gates, 7726 Wilcox Avenue, Bell, California.

Q. (By Mr. Cobey) Miss Gates, are you at present employed by Germain's? A. Yes, sir.

Q. How long have you been so employed?

A. Twenty-four years.

Q. What is your present position? [68]

A. Cashier.

Q. Do you know a Mr. Dwight V. Gates?

A. Yes, I do.

Q. Is he employed at Germain's?

A. Yes, sir.

Q. What is his position there?

A. He is superintendent of the warehouse.

Q. How long has he been superintendent of the warehouse?

A. Let me see. I really don't know. I know it has been a number of years, but I don't know.

Q. Would it be as many as ten?

A. Yes, all of that.

Q. Have you ever been a member of any labor organization? A. No, sir.

(Testimony of Viola V. Gates.)

Q. Well, have you ever been a member of the Consolidated Seedsmen's Union?

A. Yes, I am a member.

Q. You are a member now?

A. Yes, sir.

Q. Do you recall when you joined?

A. No, I don't, but I think when it was organized I joined.

Q. Have you ever been an officer of the Consolidated Seedsmen's Organization?

A. I have been the treasurer.

Q. Do you recall when you became treasurer?

[69]

A. I don't remember the date. It was right after it was organized, I was asked to be treasurer.

Q. And have you been treasurer ever since?

A. Yes, sir. [70]





(Testimony of Viola V. Gates.)

Q. (By Mr. Cobey) Now, Miss Gates, I understand that you have been treasurer of the Consolidated Seedsmen's Union practically since its inception?      A. Yes, sir.

Q. And as a part of your duties in that office, you have kept the financial records of the Consolidated Seedsmen's Union?      A. Yes, sir.

Q. Now, I ask you whether or not you recall whether at any time during your term of office Mr. Meyberg made any contributions or donations to the Union?

A. No, he did not, not to my knowledge, make any donations. [73]

Q. (By Mr. Cobey) Miss Gates, for the purpose of refreshing your recollection, I show you the book of account of the Consolidated Seedsmen's Union, which was obtained from that organization under subpoena and brought to this hearing by yourself, and I call your attention to an entry there in June, 1938. Would you explain that entry?

A. Yes, I will. That was—we had a picnic out at Orange County Park, and everyone was invited to the picnic, and Mr. Meyberg was asked would he give something for the team, the baseball team, and he bought cigarettes for the team, for the winning team.

Q. I see.

A. That is what that item is.

Q. That is what that entry of \$10.00 is about?

A. Yes, sir.



(Testimony of Viola V. Gates.)

Q. Do you know whether or not Mr. Meyberg made any other contributions of that character, in connection with the picnics and the outings of the organization? [74]

A. I don't remember. We had another picnic, but I don't know whether he had anything to do with that or not. I don't remember that.

Q. Could you tell us how the dues are collected for the Consolidated Seedsmen's Union?

A. Well, we have representatives in each division, and the books are handed out to the people that have charge of that division, and they are collected through them. The dues are collected through the division representatives.

Q. Then these representatives turn the dues over to you? Is that correct?      A. Yes, sir.

Mr. Watkins: When you are speaking of representatives in charge of the division, you mean for the union? Is that it?

Mr. Cobey: Yes, that is right.

The Witness: Yes.

Q. (By Mr. Cobey) When did these representatives ordinarily turn the dues over to you?

A. Well, they have ten days to turn it over to me.

Q. Where do they turn it over to you?

A. Well, sometimes they hand it to me when I am on my lunch hour. I come in at about five minutes to 1:00 and they hand it to me at that time. I usually collected it during the noon hour, when

(Testimony of Viola V. Gates.)

I am on my lunch hour, and they handed it in to me. [75]

Q. Do you recall any occasion when they handed dues to you at any time other than on your lunch hour?      A. Well, they might set it on my desk.

Q. Leave it for you?

A. Leave it for me when I am not there, yes.

Q. Do you ever remember any of the representatives bringing dues up to you during working hours?

A. No, I don't know as they do. If they have, it has been very seldom, but I don't—I couldn't state any definite time that they have done that. Sometimes they are turned in at our union meetings.

Q. I see. You have attended the meetings of the Consolidated Seedsmen's Union fairly regularly?

A. Yes, sir.

Q. How is the membership notified of those meetings?      A. By a bulletin.

Q. Where is the bulletin posted?

A. On the time clock.

Q. In the warehouse?      A. Yes, sir.

Q. I see.

A. Oh, no, not entirely in the warehouse. It was at our different branches.

Q. On the time clock at the various branches?

A. Yes, sir. [76]

Q. As I understand it, just for the sake of clarity, the Consolidated Seedsmen's Union just

(Testimony of Viola V. Gates.)

takes in the employees at the warehouse, and the Hill Street store, and out at Van Nuys? Is that correct?      A. That is right.

Mr. Cobey: And no other units of the company's operations are involved in this proceeding? I think that is understood?

Mr. Watkins: Yes.

Q. (By Mr. Cobey) Now, Miss Gates, you were in the court room when Mr. Sage testified?

A. Yes, sir.

Q. Do you recall whether or not you attended any of those meetings?

A. I attended the one at Hill Street.

Q. The one at Hill Street?      A. Yes, sir.

Q. Do you have any recollection of what happened at that meeting?

A. Well, just that Mr. Voorhees talked to us, and some other gentleman. I don't know his name.

Q. Would you know his name if it was called to your attention?

A. No, I don't believe I would.

Q. Do you recall anything of what Mr. Voorhees said? [77]

A. Well, he told us how the other—how other places had worked with an independent union, how they were succeeding, and I believe the other man that was there talked on the same subject. If I remember correctly, I think he was from some airport, but I don't know.

Q. Was he from Douglas Aircraft?

(Testimony of Viola V. Gates.)

A. I really don't know.

Q. Do you happen to know whether or not the representatives ever send the dues over to you by company truck?

A. Not that I know of, that—

Trial Examiner Paradise: Did you say "by company check"?

Mr. Cobey: Company truck. I am sorry.

The Witness: They do. I believe our Van Nuys dues come in by company truck, that the member brings it himself.

Q. (By Mr. Cobey) Is that Amos Kays?

A. No, Robert Montgomery.

Trial Examiner Paradise: Will you explain what you mean? You don't mean, counsel, do you, that the money is transported by company truck in the sense that an amored truck would deliver a payroll?

Mr. Cobey: No. I don't think it is that much.

Trial Examiner Paradise: You mean that the man that collects the money or delivers the money works on the truck?

The Witness: The man that delivers the money works on [78] the truck.

Trial Examiner Paradise: Is he a representative?

The Witness: He is a union member and takes it from the representative at Van Nuys.

Q. (By Mr. Cobey) And he merely uses that transportation to come in?

(Testimony of Viola V. Gates.)

A. Yes. He comes in every morning.

Mr. Watkins: He comes in on normal business?

The Witness: Yes.

Mr. Cobey: That is all.

Mr. Watkins: I have no questions.

Trial Examiner Paradise: You may step down.

(Witness excused.)

Mr. Cobey: Mr. Hulphers.

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ERIC G. HULPHERS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

The Witness: Eric G. Hulphers, E-r-i-c G. H-u-l-p-h-e-r-s; 3153 West 110th Street, Inglewood.

Q. (By Mr. Cobey) Mr. Hulphers, do you work at Germain's? A. Yes, sir. [79]

Q. What do you do down there?

A. I am clerk over particular supplies and insecticides now, order clerk.

Q. Is that in the warehouse? A. Yes, sir.

Q. What floor? A. Fourth floor.

Q. How long have you worked for the company?

A. Over four years.



(Testimony of Eric G. Hulphers.)

Q. Would you tell us the positions that you have held since you have been in the employ of the company?

A. I was freight elevator operator, which includes the gathering up of mail and running errands and doing general work, some general work in the shipping department and throughout the building.

Q. How long were you freight elevator operator?

A. Three years.

Q. For three years?           A. Yes, sir.

Q. Under whose supervision did you work?

A. Mr. Hill, W. E. Hill.

Q. Then did you go up to your present job?

A. No. I was—I went down on the shipping floor.

Q. You worked on the shipping floor?

A. Yes, sir. [80]

Q. General labor?

A. For a while. Then I went up to the fourth floor and worked for a little while, and I broke in up there for several months. I worked half days and broke in, and in all the spare time I could get I broke in learning the business.

Q. How much time did you spend on the shipping floor?

A. Oh, off and on a few hours a day, or a half a day, or such.

Q. I mean, when you were working down there, how long did you work there?

(Testimony of Eric G. Hulphers.)

A. Oh, the first period I don't know exactly, but I worked on four—I worked on the elevator from January, 1937 until January, 1940. Then do you want me to proceed?

Q. Yes.

A. Then I went down on the shipping floor for about a month.

Q. Then after that you were broken in?

A. Then after that I went directly to the fourth floor and worked up there because I knew that stock already.

Q. I see. That has been your complete employment experience?

A. No; no. I worked on the fourth floor until August.

Q. August, 1940?

A. Yes, sir. Then I went to the bull gang, general labor, until October, 1940, and at that time I went on the shipping floor, and I stayed on the shipping floor then until January, 1941. Then I went to the fourth floor and I have been on [81] there again up until now.

Q. Under whom do you work at the present time?

A. Under Mr. Nesbit, and he works under Mr. Hill. He is the floor supervisor.

Q. Do you happen to know whether or not there has been more than one Mr. Nesbit employed down at Germain's for the last four years?

(Testimony of Eric G. Hulphers.)

A. I never had knowledge of another Mr. Nesbit being employed down there.

Q. There has only been one Mr. Nesbit?

A. This is Mr. Vivian Nesbit.

Q. I see. When you were employed on the bull gang, under whom did you work?

A. Mr. Gates.

Q. And when you were employed on the shipping floor you worked under Mr. Hill? Is that right?

A. Mr. Hill.

Q. I see. Do you know Mr. Harold Frauenberger?

A. Yes, sir.

Q. Can you tell me whether or not he is employed at Germain's?

A. Yes, sir.

Q. Was he employed there in August and September of 1937?

A. Yes, sir. [82]

Q. (By Mr. Cobey) Have you worked with Mr. Frauenberger?

A. Yes.

Q. When did you work with him?

A. On the shipping floor for one month.

Q. On the shipping floor for one month?

A. In 1940.

Q. What were his duties at that time?

A. City dispatcher.

Q. City dispatcher?

A. Over all the trucks, to my knowledge.

Q. How many trucks do you have?

A. About four.

Q. Do you know Mr. Allan Hook?

A. Yes, sir.

(Testimony of Eric G. Hulphers.)

Q. Have you ever worked with him?

A. Yes, sir.

Q. When did you work with him?

A. I was under him when I was on the bull gang. He was, well, we call him straw boss. What the terms are, I don't know. He relayed all the orders of the day to us.

Mr. Watkins: Just a minute. I object to that as call- [83] ing for a conclusion of the witness and also being hearsay evidence, and not the best testimony as to what duties these men performed. I move that the answer be stricken.

Mr. Cobey: I think in view of the fact that this witness has worked with Mr. Hook, he can testify as to the duties of Mr. Hook during the period during which he worked with Mr. Hook.

Mr. Watkins: I suggest, Mr. Examiner, that the witness' own statement tells what he has done. He was an operator of the elevator for four years, and he has been shifted from pillar to post, and these particular people we are discussing have been subpoenaed and can tell us of the duties they have performed.

Trial Examiner Paradise: I think the witness can tell us as to what his observation was. The objection is overruled.

Is there any question pending?

(The last question and answer read.)

Mr. Watkins: I believe I moved to strike that answer, Mr. Examiner.

(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: The motion is denied.

Q. (By Mr. Cobey) Do you know Mr. D. G. Hatfield? A. Yes, sir.

Q. Have you ever worked with him at all?

A. A few days at a time; several times is all.

[84]

BOARD EXHIBIT 7

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Anderson, Betty (Mrs.)	Director	2	1-1-40 to 1-1-41
Ashley, Violet	Secretary		2-9-38 to 11-1-38
“ “	Representative	4	8-9-38 to 1-1-41
Bettis, Betty	Representative	5&6	3-5-41 to .....
	Secretary		4-1-41 to .....
Brown, Hazel	Secretary		4-2-40 to 10-1-40
Butterfield, J. W.	President		9-23-40 to 4-1-41
Butterfield, Myrtle	Representative	4	1-1-38 to 8-9-38
“ “	Secretary		6-7-38 to 7-5-38
“ “	Director	4	1-1-41 to .....
Clark, Wm. S.	Formational Committee & Incorporator		
“ “ “	Director	6	9-20-37 to 9-20-37
Crayton, Nyda	Representative	2	1-1-38 to 1-1-39
Durand, Ethel (Mrs.)	Representative	5&6	1-1-41 to 3-5-41
“ “	Director	5&6	3-5-41 to .....
Eaton, Blanche L.	Director	4	9-20-37 to 11-2-37
“ “	Secretary		11-1-38 to 4-4-39
Epperson, Wm. A.	Representative	1	7-1-38 to 7-1-39
“ “	Director	1	7-1-39 to .....
Farley, Thomas	Director	5	9-20-37 to 2-7-39
“ “	Vice-President		9-20-37 to 4-5-38
“ “	Director	5&6	1-1-40 to 3-5-40



## (Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Fenster, Harry	Director	6	9-20-37 to 11-1-38
“ “	“	5&6	2-7-39 to 1-1-40
Fenster, Louis	Representative	7	5-6-40 to .....
Fielding, Theo	Vice-President		11-6-40 to .....
Frauenberger, H.	Formational Committee & Incorporator		
“ “	President		9-20-37 to 4-5-38
“ “	Director	1	9-20-37 to 7-1-38
Gates, Viola B.	Financial Secretary & Treasurer		9-28-37 to .....
Harger, Corinne	Director	2	1-1-39 to 2-7-39
“ “	Representative	2	2-7-39 to 1-1-40
Harrison, Thos. G.	Representative	5	9-20-37 to 7-1-38
Hartline, Harry	Representative	3	7-1-39 to 7-1-40
Hatfield, D. G.	Director	3	9-20-37 to 7-1-38
Hook, Allen	Formational Committee & Incorporator		
“ “	Representative		9-20-37 to 7-1-38
“ “	Director	3	9-20-37 to 9-20-37
“ “	“	“	7-1-40 to .....
“ “	President		4-1-41 to .....
Hysell, Denver	Representative	7	9-20-37 to 7-1-39
Kadous, Richard	President		4-4-39 to 2-6-40
“ “	Director	1	7-1-38 to 7-1-39
“ “	Representative	1	7-1-39 to 3-5-40
Kays, Amos	Director	7	7-1-38 to .....
Luck, Richard	Formational Committee & Incorporator		
“ “	Director	2	9-20-37 to 1-1-39
“ “	President		4-5-38 to 4-4-39
“ “	Secretary		4-4-39 to 4-2-40
“ “	Director	2	11-7-39 to 1-1-40
Lyman, Wm.	Inside Guard		11-9-37 to .....
Lilly, Emily	Representative	3	7-1-40 to .....
Loeb, Wm.	Representative	5&6	5-6-40 to 1-1-41

(Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Marquez, Louis	Outside guard		11-2-37 to .....
Martinez, Mary	Representative	6	9-20-37 to 11-1-38
Miller, Ann (Miss)	Representative	2	1-1-41 to .....
Miller, Frank	Representative	1	3-5-40 to .....
Nesbitt, Vivian J.	Director	3	7-1-38 to 7-1-39
Orr, Harry B.	Formational Committee & Incorporator		
	Director	5	9-20-37 to 9-20-37
Otto, Marion	Representative	3	7-1-38 to 7-1-39
Porter, E. J.	Representative	5	7-1-38 to 2-7-39
“ “ “	Director	5&6	3-5-40 to 3-5-41
Regan, Erich	Vice-President		4-5-38 to 11-6-40
Roberts, Florence	Representative	2	1-1-39 to 2-7-39
“ “	Director	2	2-7-39 to 7-12-39
Rowe, Ora	Representative	7	7-1-39 to 5-6-40
Sevaldsen, Karl	Director	2	7-12-39 to 11-7-39
Siemsen, Florence	Representative	2	9-20-37 to 1-1-38
Sievers, Minnie T.	Representative	6	9-20-37 to 11-1-38
“ “ “	“	5&6	2-7-39 to 1-1-40
Slee, Ruth	Secretary		11-6-40 to 4-1-41
Smotrys, Mrs. M.	Representative	4	1-1-41 to .....
Stearn, Morris	Formational Committee & Incorporator		
“ “	Director		9-20-37 to 7-1-38
Swain, L.	Representative	5&6	1-1-40 to 5-6-40
Tabor, Howard	Representative	1	7-1-40 to ?
Turton, Dorothy	Formational Committee & Incorporator		
“ “	Financial Secretary		
	& Treasurer		9-20-37 to 9-20-37
“ “	Secretary		9-20-37 to 6-7-38
“ “	Director	4	9-20-37 to 9-20-37
	Representative	4	9-20-37 to 1-1-38

(Testimony of Eric G. Hulphers.)

<u>Name</u>	<u>Office</u>	<u>Div.</u>	<u>Term</u>
Wall, Francis A., Jr.	Director	6	11-1-38 to 2-7-39
“ “ “ “	“	3	7-1-39 to 7-1-40
Wallace, Irene (Miss)	Representative	2	1-1-40 to 1-1-41
“ “	Director	2	1-1-41 to .....
Watson, Stanley	President		2-6-40 to 9-23-40
	Representative	1	9-20-37 to 7-1-38
Wingrove, Forna	Director	4	11-2-37 to 1-1-41

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RICHARD F. KADOUS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address in a loud voice, please.

The Witness: Richard F. Kadous, K-a-d-o-u-s; 1241 East 89th Street.

Q. (By Mr. Cobey) Mr. Kadous, were you at any time employ- [86] ed by Germain's?

A. Yes, I was.

Q. What was the period of your employment?

A. I started to work for Germain Seed in September of 1936 and worked for them until January of 1940.

Q. What did you do while you were there?

A. Well, I first worked for Mr. Gates on the bull gang, and I can't recall exactly how long, I

(Testimony of Richard F. Kadous.)

think it was about until in January of 1937, and then I worked for Mr. Hill from then on.

Q. In the shipping department? A. Yes.

Q. What were your duties?

A. I was assistant to the City Shipping Clerk.

Q. Who was that?

A. Mr. Frauenberger.

Trial Examiner Paradise: What was that name?

The Witness: Mr. Harold Frauenberger.

Q. (By Mr. Cobey) What did you observe Mr. Frauenberger do [87] when you were working as his assistant?

The Witness: Well, he took—had charge of the deliveries of the city division, of shipping, and he routed all the bills for the truck drivers.

Q. (By Mr. Cobey) Did you ever observe Mr. Frauenberger relay any orders of Mr. Hill to the truck drivers? A. No, I did not.

Q. Did Mr. Frauenberger ever take the place of Mr. Hill in Mr. Hill's absence? [88]

A. I am quite sure if Mr. Hill was absent that Mr. Frauenberger filled in. I wouldn't say he would take his place, but he did the duties that Mr. Hill ordinarily would do, to some extent. Of course, he couldn't do all the things Mr. Hill did.

Mr. Watkins: Just a minute. I move to strike the portion of the witness' answer to the effect that Mr. Frauenberger did the duties of Mr. Hill, as being a conclusion.

(Testimony of Richard F. Kadous.)

Trial Examiner Paradise: The motion is denied.

Q. (By Mr. Cobey) Mr. Kadous, were you ever a member of the Consolidated Seedsmen's Union? A. Yes, I was.

Q. Will you state the period of your membership?

A. Well, I was a member since its beginning, and then until I left the employment of the Germain Seed and Plant Company.

Q. Were you ever an officer of the Consolidated Seedsmen's Union? A. Yes, I was.

Q. What offices did you hold?

A. Well, I was on the Board of Directors for a while, and I was head of the—representative of the shipping department, and then I was also president of the union.

Q. Mr. Kadous, I hand you Board's Exhibit 7, and I call attention to your name there in the officers and to the terms of office opposite your name. To the best of your recollection, [89] is that a correct statement? A. That is correct.

Q. Mr. Kadous, you were in the court room when Mr. Sage testified? A. Yes, I was.

Q. Do you recall any of those meetings as to which he testified? A. Yes, I do.

Q. Were you present at those meetings?

A. Yes.

Q. Let's take the first meeting at which Mr. Sage spoke. Do you remember anything as to what he said?



(Testimony of Richard F. Kadous.)

A. Well, I remember that we had a meeting on the shipping floor amongst the employees. There were mostly men present, and Mr. Sage addressing the group, and he asked—spoke in regard to forming a union, and he brought up, well, the organization that they used to have there, and he thought it would be a very fine thing if we could form something of that order at this time, and as far as I could see, most of them agreed with him.

Q. Were you at the second meeting, at which Mr. Voorhees spoke?      A. Yes, I was.

Q. Do you remember what Mr. Voorhees said?

A. Well, he merely pointed out that there were different in- [90] dependent unions around town, and how they were working, and that was mostly the extent of his conversation.

Q. Do you recall whether or not Mr. Hill and Mr. Gates were present at those meetings?

A. They were present at the beginning of one of the—the second meeting, until they were dismissed.

Q. Did you attend the meeting in the Hill Street store?      A. Yes, I did.

Q. Do you recall as to what happened at that meeting?

A. Well, Mr. Voorhees was there, and there was also a man there from Douglas, but I don't recall his name, and he spoke on the independent unions.

Q. Would you recognize his name if you heard it?      A. I don't think I would.

(Testimony of Richard F. Kadous.)

Q. It wasn't Michael Fanning, was it?

A. I am not sure. I wouldn't say for sure. I just know he was from Douglas.

Q. Who presided at that meeting at the Hill Street store?

A. I think Mr. Sage introduced Mr. Voorhees, and then from there on Mr. Voorhees introduced the other speaker from Douglas, and Mr. Voorhees was the man that presided over the entire meeting.

Q. Do you recall whether or not any election was held at the plant during this period?

A. Yes, I recall an election that was held in regard to what [91] union to form, but I can't remember whether it was held after——

Mr. Cobey: Will you mark this Board's Exhibit 8, for identification.

(The document was marked as Board's Exhibit 8, for identification.)

Trial Examiner Paradise: Had you completed your answer, Mr. Kadous?

The Witness: No, I haven't.

Trial Examiner Paradise: Complete it, please.

The Witness: I think the election was held between the meeting that Mr. Voorhees presided at in the warehouse and the meeting that we had at the Hill Street store.

Q. (By Mr. Cobey) Now, Mr. Kadous, I hand you Board's Exhibit 8, for identification. Have you ever seen such a document before?

(Testimony of Richard F. Kadous.)

(Handing document to witness.)

A. Yes, I have.

Q. Would you state the circumstances under which you saw such a document?

A. They were the ballots that were used in the election as to the choice of the union.

Q. As to this election as to which you have just testified? A. Yes.

Q. You have testified that this election occurred between the second meeting at the warehouse and the meeting at the Hill Street store, to the best of your recollection? [92]

A. I am not positive about that, but I think it did.



BOARD EXHIBIT 8

- C. I. O. ....
- A. F. of L. ....
- Independent .....
- Have Mr. Meyberg talk to us.....



Q. (By Trial Examiner Paradise) With respect to the time when this was used, you say it was between which meetings?

A. Between the second meeting that—well, between the second meeting at the warehouse—

Q. Is that the one that Mr. Voorhees held?

(Testimony of Richard F. Kadous.)

A. Yes, that was the first meeting at which Mr. Voorhees spoke, and I think the other meeting was at the Hill Street store about three weeks later, and we had held an election between that time.

Q. You say you had held an election between that time. Do you mean you held an election in which you used these ballots which have been marked Board's Exhibit 8, for identification?

A. Yes, sir.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Can you tell us how that election was held? [93]

A. The ballot boxes were placed in the different divisions or the different departments, such as the third floor, the fourth floor, the shipping department and the Hill Street and Van Nuys Ranch.

Q. Who placed the ballot boxes?

A. I wouldn't know exactly. I wouldn't be able to answer that question.

Q. Do you know who arranged the details of the election?

A. I am quite sure Mr. Frauenberger did.

Q. That is Mr. Harold Frauenberger?

A. Yes.

Trial Examiner Paradise: Mr. who?

The Witness: Mr. Harold Frauenberger.

Q. (By Mr. Cobey) Now, what time of day did this balloting take place?

A. I think the ballot boxes were placed, well, on

(Testimony of Richard F. Kadous.)

one of the days, and that everybody voted as they found time to vote.

Q. The ballot boxes in the warehouse were just placed on the various floors? A. Yes.

Q. And one at the store and one at the ranch?

A. Yes.

Q. And the employees came up as they found time to vote? A. Yes.

Q. Now, these ballots were thereafter counted?

[94]

A. They were what?

Q. Counted? A. Yes, they were counted.

Q. Do you recall whether or not you assisted in the counting?

A. Yes, I did. I assisted in the counting.

Q. Where did that counting take place?

A. The counting took place in the—it took place just about the shipping floor, in the hot cap department.

Q. In the hot cap department?

A. Yes, sir.

Q. Do you happen to know who printed up Board's Exhibit 8?

A. Was that the ballot?

Q. That was the ballot. Who prepared that?

A. I wouldn't be able to say. That I wouldn't know.

Mr. Cobey: Mark this as Board's Exhibit 9, for identification, please.



(Testimony of Richard F. Kadous.)

(The document referred to was marked as Board's Exhibit 9, for identification.)

Q. (By Mr. Cobey) Now, Mr. Kadous, I hand you Board's Exhibit 9, for identification. Do you recognize that document?

(Handing document to witness.)

A. Yes, I do.

Q. Does that represent a tabulation of the votes in this election as to which you have just been testifying? [95]

A. That is correct.

Q. As I understand it, each of the names of persons appearing on Board's Exhibit 9, for identification, is the name of a person who was at that time employed by Germain's?

A. Yes, that is correct.

Q. Do you know at what time of day this counting was done?

A. It was done during the lunch hour.

Q. Do you happen to know how the results were made known to the employees?

A. Well, I think they were made known by just word of mouth more or less.

Q. In other words, those who counted the ballots then went around and told the employees?

A. Yes.

Q. As to what the results were? A. Yes.

[96]

(Testimony of Richard F. Kadous.)

BOARD EXHIBIT 9.

	Total
C. I. O. ....	3
A. F. L. ....	33
Ind. Union .....	45
Meyberg .....	11
Spoiled Ballots .....	10
<hr style="width: 10%; margin-left: auto; margin-right: 0;"/>	
Total .....	102

Counted By

- W. S. Clark
- Martinez
- Richard Kadous
- James Neal
- V. J. Nesbit
- Watson
- L. H. Miller.

Q. (By Mr. Cobey) Do you happen to know how that tabulation committee was selected?

A. I don't recall how they were selected, no.

Trial Examiner Paradise: How were you selected?

The Witness: How was that?

Trial Examiner Paradise: How were you selected?

The Witness: If I remember right, at the meeting at the Hill Street store—no, it couldn't have

(Testimony of Richard F. Kadous.)

been at that meeting. I think they were just appointed at random by the—well, in fact, I think there was one person from each division on the counting, and they were appointed, if I am not mistaken, by Mr. Frauenberger.

Trial Examiner Paradise: Who told you that you were going to be on this committee to count the ballots?

The Witness: I don't think I could answer that correctly. I don't remember. [97]

Q. How was the membership notified of the meetings of the Consolidated Seedsmen's Union?

A. They were posted at the time clocks of the different stores, like the Ranch, the Hill Street and in the warehouse.

Q. Now, when you were a representative of the Consolidated Seedsmen's Union, Mr. Kadous, how did you collect dues for that organization?

A. Well, I did—I only had about five people to collect from, and it is very simple to collect dues from five people, and I generally approached them whenever I felt I had a few minutes time.

Q. That was on the job?

A. I don't think I paid any particular attention to the time when I did it.

Q. Just when they had a spare moment and you had a spare moment?

A. And if I was anywhere near the fellows that owed the dues, I would approach them about it.

(Testimony of Richard F. Kadous.)

Q. (By Mr. Cobey) What was the average attendance at the meetings when you were president?

A. Oh, I should judge it was around 25, or that.

Q. Did you or did you not have any difficulty in maintaining attendance?           A. Yes, sir.

Mr. Watkins: Just a minute. I object to that as being incompetent, irrelevant and immaterial, and also calling for a conclusion of the witness, not being the best evidence when the books and records are available.

Trial Examiner Paradise: Overruled. [99]

Q. Mr. Kadous, I call your attention to the fact that Board's Exhibit 10, for identification, relates to the preferential employment of union members. Was that an established policy of the Consolidated Seedsmen's Union?

A. Yes. It was the policy to try to get the union members to work before the others—before anyone else was hired.

Q. How was that worked out?

A. Well, merely by the order of this list that we gave to Mr. Meyberg every month, in regard to union members that were unemployed. [101]

Q. (By Mr. Cobey) Did your list of unemployed members include only those that were in good standing, or delinquents as well?

The Witness: It included the names of all the union members.

Q. (By Mr. Cobey) The names of all of the union members?

(Testimony of Richard F. Kadous.)

A. Whether they were paid up or whether they weren't paid up.

Q. When you were president, this was a regular practice, to submit this list each month to Mr. Meyberg?  
A. Yes, sir.

Q. During your term of office did union members secure preference in employment?

A. Yes, in most cases they did.

Q. In most cases they did?      A. Yes.

Q. Mr. Kadous, do you recall whether or not any meetings of board of directors during your term in office were held down at the warehouse?

A. No, we had no meetings in the warehouse at all.

Q. No meetings of either the board of directors or of the membership?

A. No meetings whatsoever. [102]



(Testimony of Richard F. Kadous.)

BOARD EXHIBIT 10.

CONSOLIDATED SEEDSMEN'S UNION

Sept. 13, 1939

Dear Mr. Meyberg:

As is our custom to inform you about our members who are not working at the present time; we wish to submit the following list of names:

Miss Sue Busick

“ Hazel Brown

“ Eva Kevan

“ Allie Conrad

“ Mildred Bruce

“ Virginia Bland

“ Irma Wright

Mr. Robert Kadous

These members are usually employed in the office or on the third floor and are used, when possible, on the radio work. At the last meeting of the Board of Directors the fact, that there are other people working in these Departments who are not members, came to light.

Thank you for your cooperation in this connection.

Yours truly,

CONSOLIDATED SEEDSMEN  
UNION INC.

R. KADOUS,

Pres.

KRL/K

(Testimony of Richard F. Kadous.)

Q. I think if you will inspect the by-laws you will find that the directors run from July to July and the officers from [103] April to April. But you don't recall having ever attended any directors' meetings at the warehouse?

A. I know we had directors' meetings, but I didn't think I was president at the time.

Q. But did you attend any meetings, whether you were president or director, that were held in the warehouse?      A. Yes, I did.

Q. You did?      A. Yes.

Q. Do you recall when those meetings occurred?

A. No, I don't. I don't think I could answer that question as to the time.

Q. I call to your attention by showing you the minute book a meeting of the directors held on June 14, 1939, which was held, according to the minutes, at the warehouse. Do you recall whether or not you attended that meeting? [104]

The Witness: I don't recall attending that particular meeting, but evidently my signature is on the minutes, and so then I must have attended the meeting.

Q. (By Mr. Cobey) Now, during your term as president, did the Consolidated Seedsmen's Union ever request from the management a written contract?      A. No, we did not.

Q. During your term of office did the management accede to all of your demands?

(Testimony of Richard F. Kadous.)

Trial Examiner Paradise: Do you understand the question?

The Witness: Yes, I do understand the question, but you will have to give me time to think, because these things happened so long ago that I don't recall right offhand.

Mr. Watkins: May I interpose an objection at this time, and again urge the objection I have made to similar previous questions. It is my rather positive recollection that the matters Mr. Cobey now is inquiring about are in the minutes of the union, and it would seem to me that that would be the quickest and most satisfactory way to get at these questions, and they are the best evidence rather than hearsay testimony. [105]

Trial Examiner Paradise: Are there minutes of the meetings between the union representatives and the company?

Mr. Cobey: There are minutes of certain meetings. I am not aware of whether they are all of the meetings or not. It so happens there are no minutes of meetings between the representatives of the union and the company during the term Mr. Kadous was president of the union.

Trial Examiner Paradise: The objection is overruled. Suppose you put a preliminary question to the witness then, Mr. Cobey. You might ask: Did your union present any demands to the company during your term of office as president?

(Testimony of Richard F. Kadous.)

The Witness: No I don't think so. I am not positive, but I am quite sure that I did not.

Mr. Cobey: That is all.

Mr. Watkins: Just a minute, please.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Kadous, you were referring to the question of preferential hiring or preference for your union members. The Consolidated Seedsmen's Union had only as members employees of Germain's; is that correct?

A. That is correct.

Q. In other words, the only ones to whom preference would apply then would be former employees of Germain's?

A. That is right.

Q. Board's Exhibit 10 is the letter from the union, I believe, [106] to Mr. Meyberg, requesting that unemployed union members, meaning Consolidated Union members be employed instead of non-union members. Had you prior to that time had some difficulty with the company because of its employment of people who were not members of the Consolidated Seedsmen's Union?

A. Not that I recall right offhand, but I think the idea of the list was more or less to, well, to make a feeling amongst the union members that we, at least, were trying to prefer their being hired back than non-union members, in order to get them something that—some reason or otherwise—so that

(Testimony of Richard F. Kadous.)

they might have some incentive to belong to the union.

Q. (By Mr. Watkins) While you were either a director or an officer of the Consolidated, did you have discussions with your members or with your other officers or directors concerning the question of employment by Germain's of only Consolidated Seeds- [107] men's Union's members.

A. Yes, we did.

Q. And have you had that question up a number of times? A. Yes.

Q. Haven't you also had the question of the company's employing outside people when there were unemployed members of your union?

A. Yes.

Q. And you had that up numerous times, did you not? A. Yes.

Q. And took it up with Mr. Meyberg on occasion? A. Yes.

Q. Is it not a fact, Mr. Kadous, that that was one of the matters which brought on the discussion of the question of the closed shop ultimately for your union?

A. Well, I haven't been employed there lately, and I don't think that we ever, that I can recall, tried to get a closed shop while I was an officer of the union.

Q. That came subsequently then to your time in office? A. Yes.

Q. And to your time of employment?



(Testimony of Richard F. Kadous.)

A. Yes.

Q. Now, going back to this election that was held some time between the Voorhees meeting at the plant and the Voorhees meeting at the Hill Street store, who suggested that such an [108] election be held?

A. Well, the majority of the employees working there suggested that we had to have some kind of an election, and we decided that was the way to have it to come to the proper conclusion to which union we was to have.

Q. Was that discussed, that is, the holding of that election with anybody from the management?

A. No, I would say no, it was not.

Q. The employees among themselves decided on that course?      A. Yes.

Q. Was any permission obtained from the management to put the ballot boxes at your places of work?      A. No.

Q. Who determined how the ballots should read, and that the names or the order appear in the order they are? When I am speaking of the ballots, I am referring to Board's Exhibit 8. What I am getting at is: On that ballot you will find the C. I. O. first, the A. F. of L. next, and then "Independent." Who determined that that order of names be put on the ballot?

A. I wouldn't say exactly, but I think that Mr. Frauenberger at that time was taking the matter in hand more or less, and, after all, there had to

(Testimony of Richard F. Kadous.)

be someone to, well, to make the move one way or the other, and I think Mr. Frauenberger took it—gave his suggestion how the ballots were to be made, and the different employees agreed onto it, as to the ballots. [109]

Mr. Watkins: I think that is all.

#### Redirect Examination

Q. (By Mr. Cobey) Mr. Kadous, in regard to that same election, I think you just testified that the idea of an election was suggested by the majority of the employees. How was such a suggestion made?

A. Well, I think at the meeting, at the second meeting in the warehouse, I am quite sure that we agreed to have an election of some kind among the employees, and there were about 25 or 20 employees there at that time.

Q. Do you recall whether or not Mr. Voorhees, in the course of his remarks at that meeting, said that to make it legal an election should be held?

A. I couldn't recall that remark.

Q. But you remember that at that second meeting there was a discussion as to whether or not an election should be held?      A. Yes.

Q. And you say that Mr. Frauenberger was the moving spirit thereafter in holding the election?

A. Yes. That is, after Mr. Sage dropped out, why, Mr. Frauenberger took over.

Q. During the period of these meetings did you personally observe any of the employees, such as

(Testimony of Richard F. Kadous.)

Mr. Frauenberger, go around the warehouse and engage in conversations with respect to the so-called independent union? [110]

Mr. Watkins: Just a minute. I object to the question as being highly leading and suggestive.

Mr. Cobey: I will rephrase it.

Q. (By Mr. Cobey) What campaigning for the so-called independent union did you observe, if any?

Mr. Watkins: Just a minute. I object to that as calling for a conclusion of the witness: What campaigning was conducted?

Trial Examiner Paradise: Overruled.

The Witness: Well, I think I would probably be in a position to know, and I think you are referring to Mr. Frauenberger, or anybody in particular, and I would more or less know whether Mr. Frauenberger did, because I worked with Mr. Frauenberger, and being I worked with him that, therefore, I would know, and I will say he did not approach me in regard to any unionism whatsoever.

Q. (By Mr. Cobey) And you did not observe him approaching anybody else?

A. No, I did not.

Q. I think in regard to this election you testified the ballot boxes were left one day and the employees given the opportunity to vote, and they were picked up and counted the next. Is that correct?

A. Yes.

Mr. Cobey: That is all. [111]

Mr. Watkins: No further questions.

Trial Examiner Paradise: Just a moment, please.

(Testimony of Richard F. Kadous.)

There are a couple of things about this election I still don't understand.

Q. (By Trial Examiner Paradise) Do you know who printed the ballots?

A. I do not know who printed the ballots.

Q. You testified that Mr. Frauenberger took the suggestion of the employees as to the organizations that would appear on the ballot. Do you remember that testimony? A. Yes.

Q. That is, the order in which they were to appear, you said the employees agreed to that?

A. Yes.

Q. Now, was there a meeting at which that was discussed?

A. No. I don't think there was a meeting. It was discussed at the second meeting in the sense that when Mr. Voorhees was there we decided to hold an election shortly after that.

Q. What was discussed at that meeting in regard to an election, so far as you can recall?

A. Well, it was just discussed that we were to have an election and what was to be on the ballot.

Q. Whose suggestion was it that you have an election?

A. I don't recall who had suggested it, but it is generally [112] the procedure that in cases of these kinds that the employees—some of them were in favor of different unions, why, in order to have them all agree, why, we decided we had to have an election so that everybody could voice themselves in regard to what union they wanted.

(Testimony of Richard F. Kadous.)

Q. Now, the question is: Do you remember who suggested it at that particular meeting?

A. I do not, no.

Q. Was there a C. I. O. union in the picture at that time?      A. No, I do not know.

Q. Was there any talk around the plant, so far as you know, of a C. I. O. union?

The Witness: No, I don't recall whether it was necessarily C. I. O. or A. F. of L., but there was talk of unions, that is all.

Q. (By Trial Examiner Paradise) Now, I am curious about this provision on the ballot. You have various alternatives. You have the C. I. O., the A. F. of L., Independent Union, and [113] then you have an alternative of another talk by—what is his name—Mr. Meyberg. Do you remember that?

A. Yes.

Q. In other words, there seems to be the choice between voting for a union or voting to have another talk by Mr. Meyberg. Do you remember any discussion of anything of that kind at the meeting?

A. Yes. I remember that some of the fellows were undecided as to what to do. They thought that the company—in fact, I wouldn't say Mr. Meyberg—that the company, in fact, would give us what we wanted without forming a union of any kind, and that was the idea of some of the employees, that we approach Mr. Meyberg before going into any union, and his talk was more or less on that line.

Q. Whose talk was more or less on that line?



(Testimony of Richard F. Kadous.)

A. Well, if Mr. Meyberg would talk to us in regard to union, why, it was more or less on whether we were to have any union at all.

Q. I am frank to say I don't know what you are talking about.

A. Well, what I mean is that we were to have another talk with Mr. Meyberg and get our wage demands without forming a union, why, that was the idea of talking with Mr. Meyberg, to get our wage demands without forming any union of any kind.

Q. Well, had there ever been any talk with Mr. Meyberg along those lines before? [114]

A. No, I don't think there had.

Q. (By Trial Examiner Paradise) There is only one other question I want to ask. Was there any meeting of the employees or of any groups of employees after the meeting at which Mr. Voorhees spoke, with regard to the holding of this election?

A. No, there was none.

Q. Were any instructions given to Mr. Frauenberger at the meet- [115] ing at which Mr. Voorhees spoke as to preparing ballots and seeing the election went through?

A. I don't think there were any instructions given, but Mr. Frauenberger more or less took it on himself to go ahead with the situation.

Q. (By Mr. Watkins) Just one question: Are you a member of a labor organization at the present time? A. Yes, I am.

Q. C. I. O.? A. Yes, I am.

ERIC G. HULPHERS,

called as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued) [116]

Q. (By Mr. Cobey) Now, Mr. Hulphers, calling your attention to the month of August, 1937, do you happen to know whether there was any talk among the employees about joining labor unions?

A. Yes, there was. We had been approached by solicitors for the unions, from one union especially, the A. F. of L.

Q. Had you been approached by any C. I. O. solicitors?

A. I hadn't myself, or anyone to my knowledge.

Q. Do you recall whether or not during this period there were any meetings held in the shipping room of the warehouse? A. Yes.

Q. Did you ever attend any such meetings?

A. Yes, I attended two.

Q. (By Mr. Cobey) How were you notified of the first of [117] these meetings? In other words, how did you learn of the first of these meetings?

A. I believe it was by grapevine. I know there was quite a bit of discussion about this meeting that we were going to have on the shipping floor.

Q. Can you place about when this first meeting occurred?

(Testimony of Eric G. Hulphers.)

A. In August, 1937; I say in the first half of the month.

Q. In the first half of the month?

A. I believe.

Q. Now, how many employees were at this first meeting?      A. Oh, 20; around 20.

Q. Were there any women there?

A. There might have been one or two.

Q. What time of day was it held?

A. It might have been during the week, shortly after 5:00 o'clock.

Q. Can you tell me whether or not any of the following individuals were there: Mr. Sage?

A. Yes, sir.

Q. Mr. Hill?      A. Yes.

Q. Mr. Gates?      A. Yes.

Q. Mr. Hook?      A. Yes. [118]

Q. Mr. Luck?      A. Yes.

Q. Mr. Nesbit?      A. Yes.

Q. Mr. Hatfield?      A. Yes.

Q. Can you tell us what happened at this meeting?

A. Well, it all started out that we were told by Mr. Sage to take seats around, he had a discussion he thought was quite important at this time. So we all took seats around on different platforms and different piles of grass and shipments, and he got up and addressed the meeting, called the meeting to order, and he stood on a small platform used

(Testimony of Eric G. Hulphers.)

for loading and storage of sacks, and such. Do you want me to go ahead?

Q. Yes. What did he say, do you remember?

A. He said there had been talk of meetings in the building—of unions in the building—pardon me—and this was brought to his attention by gossip around the building and several actions that had taken place.

So he said, "We are all one big group, a happy family, and we want to be sure whatever we do is right." He said it seems to him that there had been talk of an outside union. He said, "Before we go any farther, remember that we all have a job that we want to keep," and he said something to the effect, "Let's not do anything to spoil our job at Germain's, or to [119] put ourselves into a circumstance so we won't be employed there any more."

He said, "Mr. Meyberg and Mr. Schoenfeld have plenty of money, and they could close the doors at any time, and it wouldn't make any difference to them."

Q. Have you any recollection of what he said along that line?      A. Yes.

Q. What did he say?

A. As I recollect, he said that the heads of the company would rather see a house union go in, and he said he knows a friend or business associate who has had some experience along that line, and that maybe he could call upon him at this time for aid

(Testimony of Eric G. Hulphers.)

to what he felt was our cause, and several of the people on the floor, the majority, I believe, agreed with him to call this man in, that they would listen to anybody at a time like this, because I believe their view was that because [120] they were getting very poorly paid.

So he said, "All right, I will get in connection with this man and see your department heads upon the progress and about the next meeting."

Q. Do you know——

A. (Continuing) Then he shook hands with several of them.

Q. Pardon me. Do you know by "department heads" to whom he was referring?

A. Well, I imagine the heads over the different departments, men who have two or three——

Q. To whom specifically was he referring?

A. Oh, I would say Mr. Frauenberger, Mr. Nesbit, Mr. Hatfield, Mr. Hook, probably Mr. Luck.

Mr. Watkins: Now, just a moment. I move that that be stricken as the witness' conclusion, unless he testifies that that was what Mr. Sage stated, that those were the people he named.

Mr. Cobey: I think he is merely stating what he understood, the individuals he understood Mr. Sage meant when he referred to department heads.

Mr. Watkins: I will make the further objection that it is in no way binding upon the respondent in this case as to what he understood or what he thought.



(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: I will let it stand as a statement of the witness' understanding, and nothing more. [121]

Q. (By Mr. Cobey) Does that complete your recollection of the meeting? A. Yes.

Q. Do you know how long it lasted?

A. About 20 minutes. [122]

Q. Now, following this first meeting in the warehouse which you attended, did you attend any other meetings of the employees that were held there? [123]

A. Yes. About a week or ten days after the first meeting. I believe it was still in August, 1939.

Q. Do you recall what time of day this meeting was held?

A. I believe that was held at 1:00 o'clock on a Saturday. Excuse me. Correction back there. That is 1937.

Q. This meeting was also held in the shipping floor of the warehouse? A. Yes.

Q. (By Mr. Cobey) Do you recall how many employees were at this meeting?

A. About 30.

Q. Were there any women there? A. Yes.

Q. Do you have any idea how many?

A. About ten to a dozen.

Q. Was Mr. Hill there? [124]

A. He was there at the beginning of the meeting, but he asked if he was eligible, and Mr. Sage

(Testimony of Eric G. Hulphers.)

says, "No, you are not eligible." So he left and took Mr. Gates with him.

Q. Mr. Gates had been there up to that time?

A. Yes.

Q. That occurred at the start of the meeting?

A. Yes.

Q. Were Mr. Hook and Mr. Nesbit and Mr. Luck and Mr. Hatfield there?      A. Yes.

Q. Can you tell us what happened at this meeting?

A. Well, there was a man there by the name of Mr. Voorhees, and Mr. Sage opened the meeting, he addressed the group as to the nature of the meeting.

Mr. Watkins: Just a minute. I object to that statement and ask that it be stricken as a conclusion of the witness, "he addressed the group as to the nature of the meeting."

Trial Examiner Paradise: Motion granted. What did he say?

Q. (By Mr. Cobey) Just tell us what he said.

A. Oh, to my knowledge, he said, "Well, we will meet here again, as a group of us," he said, and as I recall he said, "I promised that I would bring a man of my acquaintance up to address you people, a man who has the knowledge of independent unions, for he has formed several independent unions," and he [125] said, "I think I will let him talk to you now," he said, "because we all know this

(Testimony of Eric G. Hulphers.)

is the purpose, of trying to start an independent house union of ours.”

Q. Then Mr. Voorhees got up and spoke?

A. Yes.

Q. Do you remember anything about what he said?

A. He said, he introduced himself as Mr. Voorhees, said he had had some experience around the different places. He mentioned Cudahy and I believe an aircraft company at the time, and said he had experience in starting independent house unions, and several of them were going quite well, and he said he had talked to the boys over there and he had got a large increase in money, especially the truck drivers, for getting together this house union.

So he says, “I think it will be very successful.” He says, “You look like a nice bunch of people here,” and so he said, “I will tell you a little bit about it. I think it is profitable, and, oh, the dues for a house union won’t be very much, and not as much as an outside union, and there would be a nominal initiation fee.”

He asked the group if they understood about a house union and how it was run, and how it was started. So I believe several in the group says, no, they knew nothing about house unions.

So he said, “You ask the questions and I will try to [126] answer them, and we will take up

(Testimony of Eric G. Hulphers.)

about the rest of this time in doing just this." So several people asked questions.

Q. How long did this meeting last?

A. Oh, it might have been as long as an hour.

Q. Did anybody else speak besides Mr. Voorhees?

A. Yes. As I recall now, I believe there was someone else there. There was a man from Cudahy Packing Company, I believe.

Q. What did he talk about?

A. Oh, he didn't say much. He got up and said, "We are doing fine over there, doing fine, and everybody is happy, and hope you will join this, because I know you will like it and everybody will agree on everything, and everything will turn out for the best." And I believe that's all he said.

Q. Now, you were in the court room when Mr. Kadous testified, weren't you?      A. Yes.

Q. I call to your attention his testimony that at this meeting there was discussion about an election?      A. Yes.

Q. Do you recall such discussion?      A. Yes.

Q. Will you tell us what was said, and by whom, if you recall?

A. Well, Mr. Voorhees said that before he can go any further [127] with his part of the thing, there would have to be an election in the warehouse and in the company.

Q. Is that all that you recall as to what took place at this meeting?      A. Yes.

(Testimony of Eric G. Hulphers.)

Q. As to what was said about the election?

A. Yes. [128]

Q. (By Mr. Cobey) Mr. Hulphers, calling your attention to the period of the latter part of August, 1937 and the early part of September, do you remember whether the election occurred in the warehouse at that time?

A. Yes, there was an election.

Q. Would you tell us the circumstances of that election?

A. Well, at the second meeting on the shipping floor, Mr. Voorhees said before we could go further into the case of forming a house union, there would have to be an election, so that is how it came about.

Q. And when was it held?

A. It was held between the second and third meeting in the latter part of August.

Q. You mean between the second meeting in the warehouse and the Hill Street store meeting?

A. And the Hill Street store meeting, at the Hill Street store. [131]

Q. At what time of day was it held?

A. Oh, I don't know. It started in the forenoon sometime, I imagine.

Q. Did you participate in the election?

A. I did not. I just voted, is all.

Q. Will you tell us where you voted?

A. Yes. Our ballot box for the traffic department was on Mr. Frauenberger's desk, and Kadous come



(Testimony of Eric G. Hulphers.)

out to me and we talked on the matter.

Q. You mean Mr. Richard Kadous?

A. Mr. Richard Kadous. We talked on the matter a while, and then we went in and voted, being we thought we were going to vote the same way, we always do that. I went in and voted. I don't know where he voted.

Mr. Watkins: May I have the witness' answer, please?

Trial Examiner Paradise: Read it, Miss Reporter.

(The answer was read by the reporter.)

Q. (By Mr. Cobey) That was the extent of your participation? A. Yes, my part of it.

Q. Were you informed of the results?

A. Yes.

Q. How were you informed?

A. Someone had—someone in the traffic department, I believe it was, had a list of the results and I looked at it.

Q. Mr. Hulphers, I hand you Board's Exhibit 8. Have you [132] ever seen such a document before? A. Yes.

Q. Was that the ballot that was used in the election to which you have referred?

A. That is the ballot, yes, sir.

Q. Do you happen to know how that ballot was prepared? A. No, I have no idea.

Q. I show you Board's Exhibit 9. Was that the list that was brought around to you?

(Testimony of Eric G. Hulphers.)

A. Yes. That is the same figures. Whether it is the same list, I don't know.

Trial Examiner Paradise: Excuse me for interrupting, but I would like to get a continuous story on this, if possible.

Mr. Cobey: Yes.

Q. (By Trial Examiner Paradise) You say at the meeting, the second meeting in the shipping department, Mr. Voorhees said that there should be an election before you went ahead with the organization of the house union. Is that correct?

A. Yes, sir.

Q. Now, how long after that was it that you actually had the vote?

A. As close as I can remember, the second meeting was shortly after one o'clock on a Saturday, and I believe the election took place during the first part of the following week. That was in September, 1937. [133]

Q. Now, following the meeting at which Mr. Voorhees spoke, what was the next thing you knew about the election being held, before you actually went to vote?

A. Oh, I believe just the grapevine method, of different people talking about it, is the way I got it.

Q. Was there any formal announcement at any time that the vote was going to be had on a particular day?

(Testimony of Eric G. Hulphers.)

A. I never seen any, because I was in the elevator, and I always got—the boys always talked to me anyway.

Q. Then the next think you knew about the election was that you heard from somebody that you were going to vote on a certain day, is that correct?

A. Yes.

Q. How did you know to whom you were to go to get your ballot?

A. Well, I didn't know it. It was brought to me earlier—Richard Kadous told me to go in the shipping office and I went in there, and I was given a piece of paper, by Mr. Frauenberger, I believe.

Q. What time of day was that?

A. Oh, about ten or eleven o'clock.

Q. And was that piece of paper your ballot?

A. Yes, sir.

Q. Did you vote at that time or later?

A. At that time.

Q. Now, after you had voted, what was the next thing you [134] heard in connection with the election?

A. In the afternoon of the same day Mr. Kadous, I believe it was, brought a list around and showed me the results.

Trial Examiner Paradise: I see. Proceed. I am sorry to have interrupted, counsel.

Q. (By Mr. Cobey) Now, Mr. Hulphers, do you know whether or not after this election there was a meeting in the Hill Street store of the employees?

(Testimony of Eric G. Hulphers.)

A. Yes, sir, there was.

Q. Did you attend such a meeting?

A. I went up there to see how many had gone, and all, but I did not participate in the meeting. I went up to see and——

Q. But you were there?

A. I seen a couple people up there.

Q. How were you notified of this meeting?

A. I believe there was a slip on the time clock.

Q. Before attending the meeting, were you aware of its purpose?      A. Yes.

Q. You knew what the meeting was to be about?

A. Yes, sir.

Q. How long after the election in the warehouse did the Hill Street meeting occur?

A. About a week or ten days.

Q. Can you tell us what happened at the Hill Street meeting?

Mr. Watkins: Is this of the witness' own knowledge? [135] I thought he said he wasn't there.

Mr. Cobey: Yes, he said he was there.

The Witness: I went up to the meeting to talk to several fellows. Then I went home for reasons of my own.

Q. (By Mr. Cobey) You were not there at the meeting?

A. No, sir. I just went to see who attended it. Then I went home.

(Testimony of Eric G. Hulphers.)

Q. Can you tell us whether or not you ever became a member of the Consolidated Seedsmen's Union?      A. Yes, I did.

Mr. Cobey: May I have these marked as Board's Exhibits 11-A, B, C and so forth?

(Thereupon the documents referred to were marked Board's Exhibits 11-A to 11-G, both inclusive, for identification.)

Q. (By Mr. Cobey) Mr. Hulphers, I hand you Board's Exhibit 11-G, for identification. You will note that thereon there appears a signature (indicating). Can you tell us whether or not that is your signature?      A. Yes, that is my signature.

Q. Can you tell us when and where you signed Board's Exhibit 11-G, for identification?

A. On the shipping floor.

Q. Can you tell us what time of day it was?

A. No.

Q. Was it during working hours? [136]

A. Yes.

Q. Do you remember whether or not somebody brought it to you?

A. Yes, someone brought this up to me.

Q. Do you remember who it was?

A. I believe Frank Miller and Richard Kadous were together when I signed it also at the same time.

Q. You mean one of them had it?



(Testimony of Eric G. Hulphers.)

A. Yes. Which one, I don't know. It was right there.

Trial Examiner Paradise: Has the date of this been fixed?

Q. (By Mr. Cobey) Do you recall when you signed it?

A. Not the exact date, no, sir.

Q. Well, can you place it? Was it before or after the Hill Street store meeting?

A. It was about September 1, 1937.

Q. Was that before or after the Hill Street store meeting, if you recall?

A. I couldn't say for sure at this time. [137]

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## BOARD EXHIBIT 11-A

### PRE-ORGANIZATION AGREEMENT

We, the undersigned, employees of the Germain Seed & Plant Company, desire to form an independent union, for the purpose of dealing with our employer under the provisions of the National Labor Relations Act, known as the Wagner Act, and we do hereby appoint W. S. Clark, Harold Frauenberger, Dorothy Turton, K. R. Luck, A. Hook, H. B. Orr and Morris Stearn as a committee to formulate an independent union for us and to represent us with our employer under the provisions of the National Labor Relations Act known as the Wagner Act.

(Testimony of Eric G. Hulphers.)

Each of the undersigned has or will pay \$1.00 as initiation fee for membership in the union and 50¢ a month as dues commencing one month after becoming a member.

Name	Amount Paid
W. S. Clark	.....
O. E. Johnson	.....
E. E. Porter	.....
L. Farley	.....
T. G. Harrison	.....
Ethel F. Durand	.....
Louise Grow	.....
Converse	.....
Mary Court	.....
Cadd	.....
Eleanor Newmark	.....
W. J. Smith	.....
E. Ganster	.....
Leonard G. Wade	.....

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BOARD EXHIBIT 11-B

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Blanche L. Eaton	..... Pd.
Estella Gunter	.....
Viola B. Gates	..... Pd.
Myrtle Butterfield	\$1.00
Dean S. Westfall	\$1.00

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Charlotte Miller	.....
Fern A. Wingrove	.....
Edna Hutchinson	.....
Justin Scharff	..... Pd.
C. L. Van Doren	..... Pd.
C. C. Fitzgerald	..... Pd.
Dorothy Turton	\$1.00
C. K. Douglass	.....
J. Panabe	.....
W. P. Sage	.....
A. Stanley Williams	.....
Al Isleib	\$1.00
C. C. Charles	.....
Verna Newman	.....
Ella Saylor	.....

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 BOARD EXHIBIT 11-C

## PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
K. R. Luck	..... Pd.
Mae Molyneux	\$1.00 Pd.
Frances Fox	..... Pd.
M. Busching	..... Pd.
Virginia Bland	.....
S. Cora V. Dempsey	..... Pd.
Betty Anderson	..... Pd.
Florence May Siemsen	.....

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
L. Helen Martin	.....
Nyda Hansen	..... Pd.
Emily Nelson	..... Pd.
Corinne Harger	..... Pd.
Ida New	..... Pd.
Honorary Member Marguerite L. Bailey	..... Pd.
Daisy Von Zell	.....
Pearl Siemsen	.....
Dorothy Davis	.....

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BOARD EXHIBIT 11-D

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Mary B. Martinez	.....
Harry B. Orr	.....
Lewis B. Williams	.....
Minnie Therese Sievers	.....
A. Coleman	.....
L. Poor	.....
Harry Fenster	.....
Refund	\$1.00

(Testimony of Eric G. Hulphers.)

## BOARD EXHIBIT 11-E

## PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
V. J. Nesbit	x1.00 A.H.
F. A. Wall, Jr.	1.00 A.H.
D. L. Cramsey	1.00 A.H.
F. A. Wall	1.00 A.H.
James Neal	1.00 A.H.
Roy O. Yoakum	1.00 A.H.
Paul D. Spence	1.00 A.H.
Alfred A. Freeman	1.00 A.H.
Elizabeth Garnett	1.00 A.H.
Patrick J. Chavez	1.00 A.H.
Josephine Cook	1.00 A.H.
Alice Hook	1.00 A.H.
Mary Ann Miller	1.00 A.H.
xIris Slafter	.....
xPearl Ervin	.....
xErma Wright	.....
xGrace Wall	.....
xDaisy Von Zell	.....
xGrace Bland	.....
Otto Witt	1.00 A.H.
D. G. Hatfield	1.00 A.H.
A. Hook	1.00 A.H.
Edward S. Casey	1.00 A.H.
A. VandenVeer	1.00 A.H.



(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Evelyn Smead	1.00 A.H.
Ruth Dorothy Gray	1.00 A.H.
Marion Y. Otto	1.00 A.H.
J. H. Colbry	1.00 A.H.
Bob J. Kadous	1.00 H.F.

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BOARD EXHIBIT 11-F

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Ramon Magdalena	1.00
Denver Hysell	1.00
Amos S. Kays	1.00
Theodore Schrader	1.00
Morris Stearn	1.00
Erich Regan	.....
A. G. Russell	1.00

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BOARD EXHIBIT 11-G

PRE-ORGANIZATION AGREEMENT

Name	Amount Paid
Frank H. Miller	Paid
Richard Kadous	Paid
Eric G. Hulphers	Paid
Stanley Watson	
Charles F. Hill	Paid

(Testimony of Eric G. Hulphers.)

Name	Amount Paid
Louis Marquez	Paid
Jack Butterfield	
R. H. Montgomery	Paid
Bill Epperson	Paid
Harold Frauenberger	Paid

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Q. (By Mr. Cobey) You say you became a member of the Consolidated Seedsmen's Union?

A. Yes, sir.

Q. Did you sign a membership card or application?

A. Yes, sir.

Q. Do you remember the circumstances under which you signed such a card or application?

A. During noon hour. I was going—yes, I was going to punch out for noon hour, and I went by the office and I was handed one.

Q. Do you remember who handed you one?

A. I am not sure. I think Miss Fern Wingrove handed it to me.

Q. Now, are you still a member of the Consolidated Seedsmen's Union?

A. No.

Q. When did your membership cease?

A. Last October, in 1940.

Q. Can you tell us whether or not you attended any meetings of the Consolidated Seedsmen's Union?

A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Do you know how many meetings you attended? [139]

A. Last year about seven, and, oh, about a dozen before that.

Q. What was the average attendance at the meetings that you attended?

A. Well, before they started bank night, there was, oh, a few above 15 at the meetings. Sometimes they couldn't hold a meeting because there wasn't enough there.

Q. You mean there wasn't a quorum?

A. There wasn't a quorum.

Q. Do you know when bank night started?

The Witness: It started in 1939; in the fall, I believe. [140]

Q. (By Mr. Cobey) Mr. Hulphers, during the period from the inception of the Consolidated Seedsmen's Union, during the period of your employment, did you at any time observe or did you not observe any solicitation for membership in that organization? A. Yes. [150]

Q. (By Mr. Cobey) Did you observe any such solicitation yourself?

A. I solicited one member myself.

Q. Whom did you solicit?

A. Mr. Charles Loy.

Q. When and where did that solicitation occur?

A. On the fourth floor, in the presence of other people working there.

(Testimony of Eric G. Hulphers.)

Q. What other people?

A. Well, Mr. Nesbit and a Mr. Stone.

Q. Can you give the time when that solicitation occurred,—fix the approximate date?

A. The date was the middle of last summer.

Q. The middle of last summer. Can you place it any more closely?      A. No.

Q. What time of day did it occur?

A. I don't know.

Q. Do you know whether or not it was during working hours?      A. Yes.

Q. It was while you were on the job?

A. Yes, sir.

Q. How were your dues collected from you, that is the dues of the Consolidated Seedsmen's Union?

[151]

Mr. Watkins: Are you speaking just about Mr. Hulphers' personally?

Mr. Cobey: Yes, that is right.

The Witness: Well, I went in—you see, I paid some of mine of Richard Kadous, when he would be around work there and checking out trucks. I paid to Frank Miller on his desk in the shipping office; to Viola Gates at her desk in the office; to Mrs. Bobbie Otto on the fifth floor in her department. I paid to Howard Tabor once in the traffic department, and I paid at the meeting a couple of times.

Q. (By Mr. Cobey) Were any of these payments made during working hours?

(Testimony of Eric G. Hulphers.)

A. Oh, about all of them except at the meetings.

[152]

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BOARD EXHIBIT 12-A

SUGGESTIONS

1. Each department shall be morally responsible for its individual mission in the Germain Seed & Plant Co. [O. K.]

2. Overtime shall be before or after regular designated working hours, Sundays, holidays, and vacations included. The rate of pay shall be figured at time and one half. [O. K.]

3. The personnel of each department shall be adequate to safeguard the health of the employees and the business of Germain Seed & Plant Co. [O. K.]

4. Vacations: For one year to four years employment, inclusive, one week vacation with pay; for five years and over employment, two weeks with pay, [under advisement for vacation season next year] [O. K.]

5. Holidays shall include one working day off with pay for the following: New Years, Decoration Day, July 4th, Labor Day, Thanksgiving, Christmas. [O. K.]

6. At all times, seniority rights shall be respected when when gauging eligibility for advancement or lay-offs. [O. K.]

7. Seniority rights shall be respected in part-time seasonal work. [O. K.]



(Testimony of Eric G. Hulphers.)

8. The 1929 monthly scale of wages shall be restored and all departments shall have the same division of positions as in the year 1929. [Discussed Individually] [No.]

9. In case of absence in advanced positions, the one filling the position temporarily shall draw the pay rate of the position that the employee has been advanced temporarily to. [No]

10. The delivery trucks shall have meters to record overtime and the day's work. [To be worked out by the Firm and the Union] [O. K.]

11. All work from all divisions to be delivered the next day shall be in the Billing Department by 4 P.M., and on Saturdays by 11:30 A.M. [To be worked out by the Firm and the Union] [O. K.]

12. All delivery department billing that is to be delivered the next day shall be ready for the delivery department at closing time the night before. [To be worked out by the Firm and the Union] [O. K.]

13. Exceptions to the above shall be made by Germain Seed & Plant Co. to safeguard their business, but these exceptions shall not become the rule to break down this certain specified interval of time between the filling of delivery orders and the checking of merchandise on the delivery trucks. [O. K.]

14. All shipping floor doors shall be closed during the lunch hour, or a staggered lunch hour shall be arranged. [O. K.]

(Testimony of Eric G. Hulphers.)

15. There shall be a complaint department installed which shall handle the complaints on all movements of merchandise other than present day's work. [To be worked out by the Firm and the Union] [O. K.]

16. A floor man shall be furnished to check each outgoing load of merchandise and each driver shall load his own truck. [O. K.]

17. Traffic citations caused by faulty equipment shall be paid by the firm. [O. K.]

18. Regular working hours shall be as follows in the delivery department: One truck driver start at 7 A.M. with one hour for lunch. Regular work hours on week days except Saturday shall end at 4 P.M.; on Saturdays they shall end at 11:00 A.M. The dispatcher's hours shall be the same as the above to more fully assist the early movement of merchandise. All other truck drivers shall start at 7:30 A.M., with one hour for lunch. Regular work hours on week days except Saturday shall end at 4:30 P.M.; on Saturdays they shall end at 11:30 A.M. All other Traffic Department employees shall conform with regular warehouse hours. [To be worked out by the Union and the Firm] [O. K.]

19. All drivers shall assist in the work on the shipping floor to the best of their ability. [O. K.]

~~20. The weekly hours shall be 40 hours for women and 44 hours for men.~~

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 12-B

Agreements Obtained by the Consolidated Seedsmen's Union, Inc., for the Members from Germain Seed & Plant Company.

DIVISION THREE

1. Six holidays during the year.
2. One week vacation with pay to all members who have been with the firm one year.
3. Overtime to be paid at time and one half, when ordered.
4. Working hours for men changed from 47 hours to 44 hours per week.
5. Pay increase of from 5% to 18%.
6. A better allotment and statement concerning sub-foremen and their positions.

These agreements were obtained by your Division Officers who are responsible for the Union business of your Division.

Your Officers are:

Mr. Hatfield—Director

Mr. Hook—Dept. Representative

Mr. Hook and Mr. Hatfield made these agreements with the firm and were the representatives that sat with the Management at the time these agreements were made.

Any further questions concerning these agreements should be answered by your Officers who made them, which would be mainly Mr. Hook who handles

(Testimony of Eric G. Hulphers.)

your grievances or complaints. If he can not answer your questions, he should take it up with Mr. Hatfield, your Director, who will issue the final statement on any subject in question.

CONSOLIDATED SEEDSMEN'S  
UNION, INC.

Dec. 22, 1937.

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Agreements Obtained by the Consolidated Seedsmen's Union, Inc., for Their Members from Germain Seed & Plant Co.

Div. has obtained since the 1st of Oct., 1937.

1. Six holidays during the year.
2. One week's vacation with pay to all members who have been with the firm one year.
3. Overtime is time and one-half, when ordered.
4. Shorter hours. Working time changed from forty-seven hours a week to forty-four.
5. Pay increase of from 5% to 18%.
6. A better allotment and statement concerning sub-foremen and their positions.

These agreements were obtained by your division officers who are responsible for the Union business of your division. Your officers are Mr. Hatfield, Director; Mr. Hook, Dept. Rep.

Mr. Hook and Mr. Hatfield made these agreements with the firm and were the representatives that

(Testimony of Eric G. Hulphers.)

sat with the management at the time these agreements were made.

Any further questions concerning these agreements should be answered by your officers who made them, which would be mainly Mr. Hook, who is your Dept. Representative, and the one who handles your grievances or complaints. If he cannot answer your questions he should take it up with Mr. Hatfield, your Director, who will issue the final statement on any subject in question.

CONSOLIDATED SEEDSMEN'S  
UNION, INC.

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Q. (By Mr. Cobey) Now, Mr. Hulphers, calling your attention to the latter part of August 1940, will you tell us whether or not there was any talk at that time among the employees about joining outside labor unions?

A. There was continuous talk among the men——

Mr. Watkins: Just a minute. I move that the answer so far given be stricken as not being responsive to the question asked.

Trial Examiner Paradise: Read the question and answer, please, Miss Reporter.

(Question and answer read by the reporter.)

Trial Examiner Paradise: Motion denied. Objection overruled. Have you completed your answer?

The Witness: No. [159]



(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: Complete it, then.

The Witness: To continue the answer: Especially among the men on the upper floors.

Q. (By Mr. Cobey) The upper floors of the warehouse?  
A. Yes, sir.

Q. Do you know whether or not any of the men took any steps at that time to affiliate themselves with any outside labor organization?  
A. Yes.

[160]

Q. (By Mr. Cobey) What did those men do?

A. In August of 1940, the latter part of August, we all went down to see the A. F. of L.

Q. Who is "we"?

A. Do you want the names?

Q. Yes.

A. Howard Tabor, Artis—what is her name, Miss Wingrove? Artis—I know that is her first name.

A Voice: Who?

Mr. Cobey: Pardon me.

The Witness: Well, I don't recall the second name, her last name. Her first name is Artis.

Q. (By Mr. Cobey) All right. Go ahead. [161]

A. Mr. Harry Vorce, Roy Yoakum, Al Freeman, Bob Montgomery, Charles Loy, Claude Davis, Harry Hartline, John Epperson.

Trial Examiner: Is it important to have all of these names, counsel?

The Witness: I don't remember the rest now.

Mr. Cobey: Yes. As a matter of fact, I think there is just one more.

(Testimony of Eric G. Hulphers.)

The Witness: I believe they will all testify to it when they come to the witness stand.

Mr. Watkins: Do we know yet on what date this was in August?

Q. (By Mr. Cobey) Can you place the date when these men went down to the office?

A. Yes. I believe it was September 3rd.

Q. Do you know what day of the week it was? Do you have any recollection of that at all?

A. No.

Mr. Watkins: You are talking about 1940?

Mr. Cobey: Yes. September 3, 1940.

Q. (By Mr. Cobey) Now, you say that these persons whom you named went down to the A. F. of L. on that date? A. Yes.

Q. Do you know what happened down at the office? A. Yes.

Q. What happened? [162] A. Well——

Mr. Watkins: Just a minute. What office are we talking about?

The Witness: The A. F. of L. office.

Q. (By Mr. Cobey) Did these men sign up application blanks at that time? [163]

A. All but two people.

Q. Do you remember which two did not?

A. Yes.

Q. Which two were they? A. Artis——

Q. Is that Artis Shively?

A. Yes. It sounds right. I heard her name.

(Testimony of Eric G. Hulphers.)

Q. And who else?

A. And Bob Montgomery.

Q. Now, do you recall during this same period whether or not any of the employees requested wage increases from Mr. Meyberg?

A. Yes, they did.

Q. Did you ever request such a wage increase?

A. Yes. [164]

Q. (By Mr. Cobey) When was this request made?

A. This request was made at the union meetings of the Consolidated Seedsmen's Union.

Q. That was not a request on Mr. Meyberg, was it?

A. Following the request for wages of the Consolidated Seedsmen's Union, we went down to— may I say this, tell this?

Q. Subject to a motion to strike, go ahead.

A. We went down to the A. F. of L. to sign applications only, to see if they would take our case.

The Witness (Continuing): So following the day we filled out our applications, we went in to Mr. Meyberg, three of us.

Q. (By Mr. Cobey) Who were the three?

A. Charles Loy, Bob Montgomery and myself.

[165]

Q. (By Mr. Cobey) How was this meeting with Mr. Meyberg arranged?

(Testimony of Eric G. Hulphers.)

A. Arranged by Bob Montgomery for eleven o'clock, following the day we signed our applications.

Q. So, according to your testimony, that would be September 4, 1940?      A. Yes.

Q. Who arranged the meeting?

A. Bob Montgomery.

Q. Will you tell us what was said at this conference between you three and Mr. Meyberg?

A. Yes.

Q. As I understand it, they were the only people present, you three employees and Mr. Meyberg?

A. Yes.

Q. And it was held where?

A. In his office. We went in there and I told him there was quite a lot of unrest among the employees. So I said that we thought we could come to him to see if we couldn't straighten it out, rather than take any steps we were going to take, [166] because we—the Consolidated Seedsmen's Union had fallen down on us in demands, and in the matter of getting us a wage increase that we thought we had to have to live on.

So he said he didn't know there was any unrest among the men and any unagreeable circumstances of this kind, so he said, except in one case where Charles Loy was referred to, where he came up and said he didn't get enough wages.

He said, "If there is such goings on, why, I want to talk to all the men," he says, "and you

(Testimony of Eric G. Hulphers.)

make a time that is convenient to all of them to meet me, and I want to talk to them.”

And that is about all that was said.

Q. Was such a meeting held? A. Yes.

Q. When was that held?

A. Following quitting time that same night, we punched out the clock and we all went in his office.

Q. Did you have any guard for meeting them in there?

A. Yes. I went down at five minutes to and asked him if it was all right at that time to come in. He said, “Sure. Come in and bring the men in with you.”

Q. That is five minutes before quitting time?

A. Yes. So I stayed at the clock there, and when they came out, headed them all into his office.

Trial Examiner Paradise: Which men are you referring to [167] now?

The Witness: Nearly all the men in the warehouse; about 25.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Can you tell us what occurred at this meeting?

A. Yes. He opened the meeting by saying that—asking if we had a speaker, and I believe several remarks were made, “No, no one specially.”

Q. (By Mr. Cobey) Just state what you said at that meeting.



(Testimony of Eric G. Hulphers.)

A. Yes. I said, "There has been a lot of unrest in the building, the men are not getting enough wages to live on, groceries are going up, and all, and there has been no wage increase for a long time now, and the men now claim they can't live on their wages, and they will have to seek employment some place else unless there is more money paid, or get in some of the defense work or some other work, if they can, and that they are now taking steps to join outside unions."

Before we go any further in this matter, I said we would [168] like to consult him ourselves, because we had not gotten any satisfaction through the union.

Q. That is, through the Consolidated Seedsmen's Union?

A. That means the Consolidated Seedsmen's Union.

So Charles Loy brought up, he said—he said, "Does a member have to be a member—does an employee have to be a member of the Consolidated Seedsmen's Union?"

So Mr. Meyberg said, "Not necessarily. I am not interested in whether he is a member or not. If he is dissatisfied, I will try to give him what he wants."

Q. Was that all that was said?

A. Mr. Meyberg said something to the effect that he wanted to talk to the men at a later date, the

(Testimony of Eric G. Hulphers.)

men only, and that he would talk to the women separately.

Mr. Watkins: Were there women in this meeting, may I ask?

Mr. Cobey: Yes, certainly.

Q. (By Mr. Cobey) Were there women in this meeting? A. Yes.

Q. How many? A. About five.

Q. Do you know who they were?

A. Oh, a couple of them. Do you want me to name them?

Q. Yes.

Mr. Watkins: I don't think that is important.

Q. (By Mr. Cobey) Well, just name the ones you recall. Do [169] you recall any?

A. Fern Wingrove and Bobbie Otto, Mrs. Cook. That is all I remember for sure.

Q. Now, was this further meeting for the men held? A. Yes, it was.

Q. When was that held?

A. About a week later.

Q. Will you tell us how it was arranged, if you know?

A. Yes. At the first meeting he said for any of the men to get a list of them who wanted to come to a dinner, that he would give them a dinner, so he said, "and following that dinner, I will speak to all the men on this problem of increase of wages, unions and such."

(Testimony of Eric G. Hulphers.)

So some of the men said that they couldn't come. So he said "That's all right." He said, "Those that want to come and can come and it is convenient," he said, "and I will give you a dinner over at the club, and following this dinner we will have a meeting, and the remainder of the people who can come down after the dinner can all congregate in the office and talk the thing over."

Q. Was the dinner and meeting held?

A. The dinner and meeting was held.

Q. Where was the dinner held?

A. At, well, I hear it referred to as the Business Men's Club and the Terminal Club. [170]

Q. What took place at the dinner?

Mr. Watkins: Just a minute, before you go any further. Mr. Examiner, I believe I have had a running objection to this line of testimony, and I wish now to withdraw my objection to it.

Trial Examiner Paradise: Very well.

Q. (By Mr. Cobey) What took place at this dinner?

A. Well, nothing much. We ate our dinner until we couldn't eat any more and, you know, there was a few jokes told, and then we went back over to the office.

Q. How many employees were at the dinner? They were all men?

A. Yes.

Q. How many were there, do you know?

A. About 18.

(Testimony of Eric G. Hulphers.)

Q. Did you make up the list of those that could come?      A. Yes.

Q. What happened in the office? How many were there in the office?      A. About 25.

Q. Was any other representative of the management there, besides Mr. Meyberg?      A. Yes.

Q. Who was that?

A. The vice-president, Mr. Schoenfeld.

Q. Can you tell us what took place at that time? [171]

A. Mr. Meyberg got up and he said he heard it was the understanding among the employees that there was unrest and uneasiness, and they were going to take steps to get more wages, and then he said, "We are all here together, so we want to try to work all these things out among ourselves. We are one happy family," and he says, "you men have been with me a long time, some of you 25 years, some of you about that long, and we have always been a big happy family, and if we can work this thing out, why, we will, because we all want to keep on a friendly scale, every one."

So then he said, "Before I say much more, I wish to present a blackboard here, which shows approximately how the company stands in the books."

So he brought a blackboard up and showed us the figures of the Germain Seed and Plant Company, what he said was the figures, and he ex-

(Testimony of Eric G. Hulphers.)

plained different things, how much he made. I believe he made \$15,000 on twist-ems, and a couple, few thousand dollars on the radio programs, and that is all, about all I remember about that. And so after a little talk on the blackboard, why, he said, "Who is the speaker for the men?"

So Erich Regan, not employed at Germain Seed and Plant Company, he was vice-president of the Consolidated Seedsmen's Union, he got up and said—

Trial Examiner Paradise: You say he was not employed?

The Witness: No. He was a half-owner of the Green Arrow [172] Nursery.

Trial Examiner Paradise: A half owner of what?

The Witness: A half owner of the Green Arrow Nursery, I understood at that time.

Mr. Watkins: He had previously been employed?

The Witness: Yes, he had previously been employed out at the Ranch. What his duties were at the Ranch, I don't know.

Q. (By Mr. Cobey) Do you know when his employment had terminated?

A. No, not exactly.

Q. Well, approximately when?

A. In the summer—spring or summer of 1940.

Trial Examiner Paradise: I am sorry, counsel, but I just want to ask—

Mr. Cobey: Go ahead.



(Testimony of Eric G. Hulphers.)

Trial Examiner Paradise: How did he happen to be at this meeting?

The Witness: Well, he was vice-president of the Consolidated Seedsmen's Union.

Trial Examiner Paradise: Did you permit people who were no longer employed by the company to retain membership in the Union, under your constitution and by-laws?

The Witness: We permitted people who were employees of other seed companies, who wished to affiliate with us for bargaining purposes, for the union's benefit, to belong to [173] the Consolidated Seedsmen's Union.

Trial Examiner Paradise: All right. Go ahead.

The Witness: (Continuing) So then he pointed to me and said, "Erich, you are well liked by the men up there and well known by all of them, better known than most of us." he said, "What have you to say on this matter?"

And I said, "I am not discussing this matter tonight. This matter was not called by me and I am not saying a word," so I sat back. I said nothing more.

The Witness: So Mr. Meyberg began to speak again, and he said, "Due to the meetings and the actions taken by the people to see me, and all," he says, "I believe that what you say about the union not coming to me with the demands for an increase. Now," he said, "whatever I do in this case

(Testimony of Eric G. Hulphers.)

will be as of October 15, 1940, so far as increases go in wages." and he said, "I wouldn't go any farther or do anything more until you see how this thing comes out, the wages increase."

So he said, "Whatever dealings I have, I will make through the union."

Q. (By Mr. Cobey) That is, through the Consolidated [174] Seedsmen's Union?

A. Yes, through the Consolidated Seedsmen's Union. He says, "Don't"—he says, "Give me a chance to do something. Being you come up here for the chance, before you do anything, before you call the doctor in," he says, "maybe it is not the right ailment. Maybe you have got the wrong ailment." He said, "Maybe you won't need the doctor."

Q. What did you understand he meant by "the doctor"?

Mr. Watkins: Just a minute. I object to that as calling for the conclusion of the witness and also as calling for speculative testimony.

Trial Examiner Paradise: Overruled.

The Witness: I think he referred to the A. F. of L.

Mr. Watkins: I move that be stricken on the basis of the objection, Mr. Examiner.

Trial Examiner Paradise: Denied.

Q. (By Mr. Cobey) Now, I think your testimony was that Mr. Meyberg said that any raise that was granted would be as of October 15th?

(Testimony of Eric G. Hulphers.)

A. Yes.

Q. Are you certain it was as of October 15th, rather than September 15th?

A. Oh, there is a correction there. On the statement of when the wages increase would go into effect, it was of September 15, 1940. [175]

Q. Was any wage increase actually given?

A. Yes.

Q. When was that given?

A. On October 4th, on a payday.

Q. 1940?           A. 1940.

Q. Was that pay increase retroactive?

A. Will you explain that to me?

Q. In other words, did the pay increase take effect prior to the time that it was granted?

A. Yes.

Q. As of what date?           A. September 15th.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Hulphers, going back now to the Voorhees meeting in the warehouse, the first meeting, did anyone speak up at that time on behalf of the A. F. of L.?

A. At the second meeting on the shipping floor?

Q. Just prior to the election? [176]

A. What year?

Q. 1937. I believe you testified about it, that it was in either August or September of 1937, the first meeting at which Mr. Voorhees spoke at the warehouse.

(Testimony of Eric G. Hulphers.)

A. Only to the inquiry of dues, in accordance with dues that would be collected for a house union.

Q. What was said about it? I am asking now about the A. F. of L. Was anything said about the A. F. of L. at that meeting? [177]

Mr. Watkins: I would like to ask that the record show the pause between the question and the answer on these questions.

Trial Examiner Paradise: The record may show that the witness is hesitating long before answering.

The Witness: It has been quite some time ago, and to recollect my memory on that it takes a little while, to remember back, to go over in my mind about this meeting.

Trial Examiner Paradise: Now, have you thought sufficiently about it to recall what, if anything, was said at that meeting about the A. F. of L.?

The Witness: Referring to the A. F. of L. at this meeting, Mr. Voorhees said that a house union would not be so expensive, as far as initiation fees and dues.

Q. (By Mr. Watkins) Had anyone prior to that time raised the question about the comparison of the A. F. of L. with the house union?

A. Not in this meeting. [178]

Q. (By Mr. Watkins) What I am trying to get at, Mr. Hulphers, is whether or not anybody at that meeting, among the men, made any suggestion

(Testimony of Eric G. Hulphers.)

about the American Federation of Labor being on the ballot or being a good union to bring in, or about its dues, or anything of that character.

A. We all knew approximately what the initiation fee and the monthly fees of the outside union were. So taking that in behalf, people present at that meeting on the shipping floor asked what the dues would be in the house union and the initiation fee for a so-called house union.

Q. There had been American Federation of Labor organizers down at the plant prior to this time, had there?

A. Yes, there had, because—

Q. And there had been talk among the men about joining the American Federation of Labor prior to that time? A. Oh, yes.

Q. Had somebody discussed that, with you also prior to this time? A. Yes, sir.

Q. More than once? [179] A. Yes.

Q. About how long prior to this particular meeting we are talking about? A. A month before.

Q. How many times would you say anyone discussed the American Federation of Labor or joining it with you?

The Witness: Nearly every lunch hour for a month before these meetings, up until the meeting was held. [180]

Q. (By Mr. Watkins) Then you would say roughly 30 times that somebody had discussed the A. F. of L. with you prior to this meeting?



(Testimony of Eric G. Hulphers.)

A. No. We only had five lunch hours a week, and that would only make about 20 times.

Q. All right. Then 20 times, would you say was the answer to it?      A. Yes.

Q. And that is the only time, that is, during the lunch hour was the only time you had any discussion about it?

A. No; after work on the street we discussed this matter probably a half a dozen times.

Q. Then that would make 26, roughly, would it?

A. Yes.

Q. Now then, did you discuss it at any time in addition to those times, that is, after work and during the lunch hour, with anyone?

A. Yes. During the working times we did, following, oh, several hot arguments between Mr. Hatfield and Mr. Sidebottom, and Mr. Sage talked to Mr. Hatfield about it.

Q. You say Mr. Sidebottom?      A. Yes, sir.

Q. Then after some arguments at some time then there was a discussion on company time of the American Federation of Labor? Is that correct?

[181]

A. Yes.

Q. And there was some solicitation of membership in the American Federation of Labor during those times, wasn't there?      A. Yes, there was.

Q. All right. Now, you were pretty active around the plant, weren't you?      A. Yes, sir.

(Testimony of Eric G. Hulphers.)

Q. You were operating an elevator and knew what was going on?      A. Yes, sir.

Q. You also solicited for the American Federation of Labor around that time, didn't you?

A. Yes, sir.

Q. And, of course, on company time, while you were going up and down in the elevator and talking to people?

A. Yes. I argued with several department heads about this matter. That was a little of the discussion there.

Q. And you talked to other employees, didn't you, about the A. F. of L. and joining it?

A. Yes. [182]

Q. When was the first time that you thought that the Consolidated Seedsmen's Union was dominated by the company?

A. Since its beginning.

Q. You thought it right at the start?

A. Yes, sir.

Q. Did you make any report of that to the American Federation of Labor, or anyone connected with it?      A. No.

Q. When is the first time you made any report of that, or your ideas in connection with it? [183]

A. The latter part of 1940.

Q. About the first time that you went to the meeting down at the A. F. of L. quarters?

A. No.

(Testimony of Eric G. Hulphers.)

Q. You didn't report it at that time?

A. Oh, no.

Q. That was on September 3rd, I think you testified, of 1940, that you had that meeting?

A. Do you mean when we signed our applications?

Q. Yes, at the A. F. of L.           A. Yes.

Q. You didn't say anything about it at that time?           A. No.

Q. By the way, at this meeting with the A. F. of L., did the A. F. of L. suggest to you to go back to the plant and ask for wage increases?

A. Yes. They said, "Maybe we can't help you out in this matter." They said, "We can't give you any promise to help you out with more wages, and all, being such a few of you. Try to get some wages among yourselves, because we can't make any promises on what we will get you."

Q. Was that all?           A. Yes.

Q. Then you went back to the plant and you made contact with Mr. Meyberg, is that right? The three of you did? [184]           A. Yes, sir.

Q. You didn't have any trouble seeing him?

A. No trouble.

Q. I see. Then a larger group of men met with him, was it the same evening?           A. Yes.

Q. The evening of the same day?           A. Yes.

Q. Then you had a general meeting at which time he took you to dinner and you ate all you could; is that right?           A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Then there were some wage increases granted afterwards,—right?

A. Yes. In my speech to him I demanded that everybody come to a more standard wage scale, the men that were getting, oh, \$65.00 a month get increases up to the men that were getting \$90.00 a month.

Q. When he asked you who was the speaker for the group and pointed you out, why did you sit silent and tell him you didn't want to say anything?

A. Because the vice-president of the Consolidated Seedsmen's Union was there, and I figured it was his place to do the speaking and to carry on the meeting.

Q. Then you were meeting as members of the Consolidated Seedsmen's Union? Is that correct?

[185]

A. No, we weren't, because there were men there that were not members of the Consolidated Seedsmen's Union.

Q. Then why didn't you speak up for your group? You were the instigator of it, the one that started it, weren't you?

A. The majority of them was the Consolidated Seedsmen's Union.

Q. You didn't give any of your views at all at that time?      A. No.

Q. Do you remember of the company posting a notice some time shortly after this meeting about the wage increases?

(Testimony of Eric G. Hulphers.)

A. It went from hand to hand. It was brought around by a department head.

Q. Do you remember such a notice?

A. A statement of increases of wages?

Q. Yes.           A. Yes.

Q. What did it say?

A. Oh, it had a big list of names on it, the wages that the men had gotten and the wages that they were getting after we had this talk with Mr. Meyberg.

Q. Did you know that prior to this time there had been petitions circulated by various groups of employees for increases in wages?           A. Yes.

Q. You knew that? [186]           A. Yes.

Q. Ten per cent and 15 per cent increases?

A. Mr. Butterfield, Mr. Hill's stepson, had one out for ten per cent.

Q. Some of them were for 15 per cent, weren't they?

A. And the men in the warehouse up above, they had one out for a standard wage increase of \$110 a month.

Q. An increase of \$110 a month?

A. An increase to.

Trial Examiner Paradise: Excuse me for interrupting. Were these petitions for increases gotten out by various groups, or were they gotten up by the Consolidated?

The Witness: They were written and originated by two different men.



(Testimony of Eric G. Hulphers.)

Q. (By Mr. Watkins) Did you ever see any of them?      A. Yes.

Q. Do you remember what it stated on them, any of the petitions you saw?      A. Yes.

Q. What?

A. On one of them it said they wanted an increase of ten per cent, and on the other one it was a wage scale, giving a standard regular wage scale that the other warehouses around the community were giving, according to Mr. Hook, and he had this one and he showed it to me, and I signed it, and [187] that was for \$110 a month.

The one Mr. Butterfield had had ten per cent on it, but we figured for the men that were making \$65.00 a month and \$70.00, that wouldn't be enough increase.

Q. Were there any references on any of these petitions to the Consolidated Seedsmen's Union?

A. I don't remember.

Q. Now, going back again to this notice, I asked you if you remembered a notice posted by the company, signed by Mr. Meyberg, referring to the granting of the first increases. Do you remember such a notice?

A. Not in particular, no.

Q. You don't remember it being put out or posted, or what it said even?

A. I believe there was a notice on the clock that said we would get a wage increase throughout the building, in accordance with the demand for it.

(Testimony of Eric G. Hulphers.)

Q. And this was posted probably in October of 1940?      A. Yes.

Q. You don't remember the substance of it, other than what you have testified to?

A. Yes, that's all.

Q. Do you remember whether or not the notice stated that the Consolidated Seedsmen's Union had made a request for increase in wages? [188]

A. No.

Q. You don't remember that?      A. No.

Q. Do you remember any statement in it about any distinction being made in the warehouse, and also in the Hill Street store?      A. No.

Q. That was in October of 1940?      A. Yes.

Q. Going back now to this Voorhees meeting at the plant in the warehouse, in August or September of 1937, I believe you testified at that time what was said by Mr. Voorhees. Now, how do you account for the fact that the A. F. of L. and the C. I. O. were put on the ballot in the election that was subsequently held?

A. Well, why do I think they put them on?

Q. Yes. How would that come about? What caused it?

A. Well, some of the people were afraid to view their facts on any unions, and some people didn't know much about the unions, knew very little about unions, their workings, and even hardly their name. Some people didn't know there existed two unions or much of their workings about it.

(Testimony of Eric G. Hulphers.)

Q. Well, they were aware, of course, of the A. F. of L., because the organizers were working on them for 30 days?

A. Yes. They knew about the A. F. of L.

Q. Did anybody make any mention at this meeting about the [189] C. I. O.?           A. No.

Q. How do you account for the fact that the C. I. O. and the A. F. of L. were on that ballot?

A. Well, I believe that they wanted most of the votes to go, the majority of them to go for the house union, so they put on: See Mr. Meyberg, C. I. O. and A. F. of L., to pull the votes away from the A. F. of L.

Q. Suppose the A. F. of L. had not even been put on the ballot, wouldn't that have pulled them away better?

A. Well, they knew the people wouldn't vote.

[190]

Trial Examiner Paradise: As a matter of fact, there wasn't any place on the ballot for a negative vote, was there?

Mr. Watkins: No. There were four places.

Q. (By Mr. Watkins) Now, I believe you said you went over to the Hill Street meeting. When I speak of the Hill Street store meeting, that is the Hill Street retail store meeting held following the first Voorhees meeting in the plant in August or September of 1937?           A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Then I believe you testified you did not attend the meeting. Is that correct?

A. That's right.

Q. Why not?

A. Because I was against organizing a house union.

Q. And that is the reason that you didn't attend it? [191]

A. That's right.

Q. In other words, you have been against this from the start, practically?

A. From the start I was against it, because I thought it was started by the company, and I said, "Being we had the union started at all, let's go in there and try to make something of the Consolidated Seedmen's Union, give them a start, and maybe this way we will get a wage increase, being the vote went that way. We would go—we would have anyone in the union as long as we could get enough money to live on, a monthly wage so we could satisfactorily live on it."

Q. Did you ever take an active part in the Consolidated Seedsmen's Union?

A. By attending the meetings, yes.

Q. Did you ever get in any office or on the directorate of that union?

A. Last fall I was refused the office of director and representative both. I refused them.

Q. About when was that?

A. That was September, 1940, about the——

(Testimony of Eric G. Hulphers.)

Q. Now then, on September 13, 1940, at a meeting of the Consolidated Seedsmen's Union, you asked for a secret ballot on disbanding, didn't you? [192]

The Witness: Yes.

Q. (By Mr. Watkins) All right. At the meeting prior to that, on August 20th, of the Consolidated Seedsmen's Union, didn't you make the statement in the meeting that if a raise was not forthcoming then the people would join another union?

A. That's right.

Q. Where were you when you signed the pre-organization agreement for the Consolidated Seedsmen's Union? That is, I believe, your signature was on Board's Exhibit 11-G?

A. I was on the shipping floor, and I signed it with several other members.

Q. Do you remember what time of day it was?

A. No.

Q. You don't remember whether it was in the morning or the afternoon? A. No.

Q. Mr. Hulphers, when is the first time that you reviewed [193] the testimony you have given here this morning since the events happened?

A. May I have that question?

Q. Strike it out, please. When was the first time that you discussed with anybody else the things that you have testified to here this morning, about the Voorhees meeting back in 1937 and these meetings with Mr. Meyberg, and all?



(Testimony of Eric G. Hulphers.)

A. I believe there was a little mention of it at the A.F. of L. office, when we signed our applications.

Q. On September 3, 1940? A. Yes.

Q. Some little discussion of it at that time?

A. Yes.

Q. When next after that?

A. At the Labor Board headquarters.

Q. How long ago?

A. Oh, November of 1940, as close as I recollect.

Q. November of 1940? A. Yes, sir. [194]

#### Redirect Examination

Q. (By Mr. Cobey) Now, Mr. Hulphers, I think you testified that during August, 1937, there were certain arguments between Mr. Sidebottom and Mr. Sage with Mr. Hatfield. Is that right? [195]

A. Yes.

Q. In your presence? A. Yes.

Q. Over the respective merits of the A.F. of L. and an inside union? A. Yes.

Q. Can you recall more specifically the circumstances of those arguments, when they occurred?

A. Yes. One day I came up on the fifth floor, and during that same day I seen Mr. Hatfield and Mr. Sidebottom by his desk, and another time at the steps leaving the fifth floor, on the way down to the lower floors.

Q. At what time of day?

A. I don't remember.

(Testimony of Eric G. Hulphers.)

Q. Do you remember what was said?

A. I caught—no, I don't remember what was said.

Q. Now, I think you stated that there were certain petitions for wage increases circulated or passed by Mr. Hook and Mr. Butterfield?

A. Yes.

Q. Do you happen to know when those petitions were presented to the management? First, I better ask you whether or not they were presented. Do you happen to know?

A. Yes, they were presented to Mr. Meyberg.

Q. Do you know when they were presented?

[196]

A. I believe they were presented in their first meeting.

Q. Of what?

A. That we had in his office at five o'clock.

Q. The meeting of all the employees that was held the same day——

A. Yes.

Q. ——after you and Montgomery and Loy had been in there?

A. Yes. [197]

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 13-A

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

GENERAL MEETING OF THE MEMBERS OF  
CONSOLIDATED SEEDSMEN'S UNION,  
INC.

The general meeting of the Members of the Consolidated Seedsmen's Union, Inc., was called to order by the President, Stanley Watson, at 8:35 P.M. on August 20th, 1940, at the Sons of Herman Hall, 120 E. 25th Street, Los Angeles, California.

The minutes of the meeting held July 16th were read. It was moved by Fern Wingrove and seconded by Bill Epperson that the minutes be accepted. Motion carried.

Eric Hulphers said floors 4, 5, and 6 were dissatisfied with the wages and wanted a petition circulated that would have a \$25.00 a week minimum wage on it. The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another Union.

President Watson said it would be no good to join another Union unless the majority joined.

Bill Epperson suggested that petitions be gotten up by the Directors of the different departments of all three branches and if a majority signed they could be taken to Mr. Meyberg.

(Testimony of Eric G. Hulphers.)

John Epperson said what we should have is a signed agreement. President Watson said we could not get it.

It was moved by Eric Hulphers and seconded by Bill Eperson that each department have a petition made up with wage scales, to be signed by the employees. Motion carried.

It was moved by John Epperson and seconded by Bill Epperson that President Watson go to the Labor Council and find out the wage scale and find out what departments would be taken care of by the other Unions. Motion carried.

Al Hook said that the election which should have taken place in his department last July had never been held. The President will see that the election is taken.

It was moved by John Epperson and seconded by Al Hook that all members of the Union receive benefits no matter how long they have been members. Motion carried.

It was moved by Emily Lilly and seconded by Darlene Boyce that the meeting be adjourned. Motion carried.

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Secretary  
(s) WATSON  
President

(Testimony of Eric G. Hulphers.)

BOARD EXHIBIT 13-B

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

GENERAL MEETING OF THE MEMBERS OF  
CONSOLIDATED SEEDSMEN'S UNION,  
INC.

The general meeting of the Members of the Consolidated Seedsmen's Union, Inc., was called to order by the President, Stanley Watson, at 8:00 PM on September 13th, 1940, at the Sons of Herman Hall, 120 E 25th Street, Los Angeles, California.

The Secretary being absent the President appointed Violet Ashley to fill her place for the evening.

The minutes of the previous meeting were read and approved.

This special meeting was called to elect officers in Divisions 1, 3, and 7.

The Treasurer reported \$343.49 bank balance at end of August.

Eric Hulphers asked for secret ballot to disband this Union. Eric Hulphers made this a motion seconded by Claude Davis. Motion defeated.

Frank Miller made a motion that he be transferred to the warehouse division. Howard Taber seconded it. Motion carried.

Al Hook made a motion that the Warehouse women have a petition of their own. It was seconded by Mrs. Cook. Carried.



(Testimony of Eric G. Hulphers.)

Charles Fitzgerald is to talk with the Salesmen and get up a petition. Will let Viola know Tuesday, September 17th.

The other petitions will be for Office, Van Nuys, and Hill Street.

Union and Non-Union members went in to Manfred Meyberg to ask for more money. He is to have a meeting with the men September 17th.

There were two petitions reported circulating. Jack Butterfield made a motion to keep the one with the most names on it, seconded by Al Hook. Carried.

After a lengthy discussion Jack Butterfield made a motion that the election take place. Bill Epperson seconded it. Motion carried.

Division 3 (Dept., 4, 5, and 6)

Director

Al Hook .....	5
Jack Butterfield .....	3
Eric Hulphers .....	Declined
Al Freeman .....	Declined

Representative

Emily Lilly

Division 1 (Shipping Dept.)

Director

Jack Thrift .....	Declined
Bill Epperson .....	2

Representative

Howard Taber .....3

(Testimony of Eric G. Hulphers.)

Division 7 (Van Nuys)

Director

Amos Kays .....2

Representative

Louis Fenster .....2

Myrtle Butterfield made a motion that no-one leave the meeting before adjournment without addressing the chair and asking permission. Bobby Eaton seconded the motion and it carried.

There being no further business to be brought before this meeting, it was moved by Viola Gates and seconded by Jack Butterfield that the meeting adjourn. Motion carried.

(s) VIOLET ASHLEY

Acting Secretary

(s) WATSON

President

Q. (By Mr. Cobey) Mr. Hulphers, will you relate what contact you had with any representatives of the American Federation of Labor during the fall of 1937?

A. Solicitors for the A.F. of L. stopped me when I came out to lunch and asked if we were having labor trouble. And I said, "Yes, we are." I said, "I can't give you much more information on it."

And they said that they were organizing the ware-

(Testimony of Eric G. Hulphers.)

houses around that community then, and they wanted us in it too, because they understood that conditions there and around the warehouses down there were pretty bad as far as wages. That is about it. I was stopped twice, I believe.

Q. You were stopped twice? A. Yes.

Q. And that is all the contact you had with the A.F. of L. at that time?

A. Yes, that's all. [199]

Q. I understand that you didn't make application for membership in any union affiliated with the A.F. of L. prior to September 3, 1940?

A. That's right.

Mr. Watkins: He did or did not?

Mr. Cobey: He did not make application.

The Witness: No. That's right.

Q. (By Mr. Cobey) As a matter of fact, you never attended any meetings of the A.F. of L. prior to September, 1940? A. That's right.

Q. When, if at all, were you actually initiated into any union affiliated with the American Federation of Labor? A. Not until October of 1940.

Q. So your contact with any representatives of the A.F. of L. during 1937 were limited to the instances to which you just testified?

A. Yes. We were going up to the union if something wasn't done about increase in wages is all.

(Testimony of Eric G. Hulphers.)

Q. Are you referring now to 1937?

A. '37.

Q. Or 1940? A. 1937.

Q. 1937. But you didn't? A. I didn't.

[200]

#### Recross Examination

Q. (By Mr. Watkins) Now, I believe you mentioned that the petitions for wage increases were presented to Mr. Meyberg at the evening meeting with him, some time in September or October of 1940. Is that correct? [202]

A. We had two meetings in the evening. Which one?

Q. Well, you tell me which one.

A. I testified that I thought it was the first meeting, but it might have been the second meeting in the evening.

Q. All right. Who presented the petitions to him? Were they all presented by one person?

A. Mr. Butterfield, Mr. Hill's son.

Q. Presented the petitions? A. Yes.

Q. I see. What was his official capacity at that time with respect to the Consolidated Seedmen's Union? A. He was president.

Mr. Watkins: I think that is all.

#### Redirect Examination

Q. (By Mr. Cobey) Just one question: Mr. Butterfield was the son-in-law of Mr. Hill, not the son? A. The son-in-law.

(Testimony of Eric G. Hulphers.)

Mr. Watkins: Well, he volunteered that, Mr. Cobey.

Mr. Cobey: Pardon me. That is all.

Q. (By Trial Examiner Paradise) Just one question or two about Board's Exhibits 13-A and B. In Board's Exhibit 13-A, which is the minutes of the meeting of the Consolidated Seedsmen's Union of August 20, 1940, it is stated that you reported that the men on floors four, five and six were dissatisfied with the wages and they wanted a petition [203] circulated for a \$25 a week minimum wage. Do you recall having made such a report?

A. Yes, sir.

Q. Then it is further stated that Bill Epperson suggested that petitions be gotten up by the directors of the different departments of all three branches, and that if a majority signed they could be taken to Mr. Meyberg. Do you remember that?

A. Yes.

Q. And then it is stated that you, Eric Hulphers, moved that each department have a petition made up with wages scales, to be signed by each employee. Do you remember that? A. Yes.

Q. And that that motion was carried?

A. Yes.

Q. Do you recall that? A. Yes.

Q. Now, as a matter of fact, was there a petition gotten up for each department, pursuant to that motion? A. Not to my knowledge.



(Testimony of Eric G. Hulphers.)

Q. Well, do you recall what, if anything, was done to carry out the motion which, according to the minutes, was carried?

A. No. I have never seen anything.

Q. Now, did I understand you to testify that at this meeting in Mr. Meyberg's office on the 3rd of September that Mr. [204] Butterfield presented a petition? A. He presented both petitions.

Q. What do you mean when you say "both petitions"?

A. The petition for the upper floor, and another petition that Mr. Butterfield had got a lot of women's names on and, oh, other names from the other parts of the building.

Q. And what, if anything, did he say when he presented the petitions? Do you remember?

A. He said, "Here are—I want to present you with these petitions, Mr. Meyberg," and he stepped up and laid them on his desk.

Q. Now, in Board's Exhibit 13-B, which is the minutes of the meeting of the Seedsmen's Union of September 13, 1940, it is stated that:

"There were two petitions reported circulating. Jack Butterfield made a motion to keep the one with the most names on it, seconded by Al Hook. Carried."

Now, do you know what petitions they refer to there?

A. Yes.

(Testimony of Eric G. Hulphers.)

Q. Which ones are they?

A. One petition that was made up by the men on the upper floors, the men who were fighting for the wage increase, and the other one made up of the people that didn't want the wage increase.

Mr. Watkins: I didn't get that answer. May I have it [205] read?

Trial Examiner Paradise: Read it, Miss Reporter.

(The answer was read by the reporter.)

The Witness: I might add to that second answer: The people who didn't want a very large wage increase.

Q. (By Trial Examiner Paradise) Well, do you remember any of the details of these petitions?

A. Yes.

Q. Now, let's take the one that you say was for a wage increase. Who was circulating that petition?

A. The men on the sixth floor.

Q. Now, was that a different petition from the two that had been submitted to Mr. Meyberg on the 3rd of September?

A. That is the same petition.

Q. They were still getting signatures on it on September 13th?

A. Well, as I testified, that I didn't know which meeting it was handed to Mr. Meyberg, whether it was the first or second meeting. The second meeting was held on——

(Testimony of Eric G. Hulphers.)

Q. The second meeting was the dinner meeting?

A. Yes.

Q. That was the 17th of September, according to the minutes.

A. The 17th, that is right.

Q. And you don't know whether the petitions were handed to Mr. Meyberg on the 3rd or on the 17th? Is that correct?

A. That's right.

[206]

Q. Now, who was sponsoring the petition for a substantial wage increase?

A. The men on the upper floors, except Mr. Butterfield and Mr. Hatfield.

Q. Well, was that a petition of the Consolidated Union?

A. No.

Q. Or was it a petition——

A. It wasn't started as a petition of the Consolidated Seedsmen's Union. It was started because we wanted a petition that would read "our demands", and what we thought was a fair wage increase.

Q. And the petition which you say was for a smaller increase, do you know who was sponsoring that?

A. Mr. Butterfield.

Q. Well, was that just an individual enterprise on Mr. Butterfield's part, or was that action taken pursuant to some motion made at a union meeting, or what was it, if you know?

A. Well, I believe that was carried on outside of the union meetings. I noticed Fern Wingrove

(Testimony of Eric G. Hulphers.)

the same day conferring with Mr. Butterfield on the second floor, on the office floor, and there was someone else present, I don't remember now who they were on this petition. Then later on, why, several—there were two of the women there that told me about it, told me about the ballot being distributed, so I went up to see Mr. Butterfield. [207]

Q. You mean the petition?

A. The petition, yes. So I went up to Mr. Butterfield and asked him if it is true that he is circulating a petition for ten per cent, I said, when the men here are not getting a living wage here, and ten per cent will not bring much gain or bring any satisfaction as far as wages is concerned here, because some of the men are getting paid very poor.

So Mr. Butterfield at that time said, "I have got a job here," and he said, "I am not taking any chances, and this is my petition for ten per cent," and he said, "Let the other men worry about it."

Q. Well now, the minutes show that Mr. Butterfield made a motion to keep the petition with the most names on it?

A. Yes.

Q. And this motion was carried. Do you know whether there was any report made to the union as to which of the petitions had the most names on it?

A. No, sir.

Q. Do you know which of the petitions was kept and presented to Mr. Meyberg, or were both presented to Mr. Meyberg?

(Testimony of Eric G. Hulphers.)

A. No, I don't know.

Q. You don't know whether one or both, or which of the two was presented? Is that correct?

A. No, sir. [208]

#### Re-cross Examination

Q. (By Mr. Watkins) How much difference was there between this higher petition and the lower one you are talking about, in wage rates?

A. The lower one—I seen a petition passed for ten per cent, and the men were making \$70.00 a month and \$75.00 a month, some of them.

Q. Who was making \$75.00 a month? Can you name anybody?

A. Not in particular, no, because the men, most of the men, oh, were kind of ashamed to tell what they were making, and others were making more, and so they wouldn't tell what they were making, and so that is why we were asking for a standard wage scale.

Q. Then you don't know of anybody that was receiving the \$70.00 a month?

A. I believe that there is one—

Q. I say, do you know of anybody that was making \$70.00 a month? A. Yes.

Q. Who? [209] A. Mr. Howard Tabor.

Q. He was making \$70.00 a month at the time you are talking about? A. That's right.

Q. Are you sure of that? A. Yes.



(Testimony of Eric G. Hulphers.)

Q. How long had he been employed?

A. Oh, about a year.

Q. What is that?

A. About a year by then.

Q. What was he doing?

A. He was assistant shipping clerk. Mr. Miller was the shipping clerk for the receiving side, and he was assistant to Mr. Miller.

Q. How old a fellow is he?

A. His records on joining the army showed him to be 22 years old, I believe.

Q. When he joined the army?

A. Yes, sir. [210]

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EARL E. SIDEBOTTOM,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and address, please, in a loud voice?

The Witness: Earl E. Sidebottom, E-a-r-l E. S-i-d-e-b-o-t-t-o-m; 942 Menlo Avenue, Los Angeles.

Q. (By Mr. Cobey) Mr. Sidebottom, you are employed at Germain's? A. Yes, sir.

(Testimony of Earl E. Sidebottom.)

Q. What position do you hold?

A. Secretary-treasurer.

Trial Examiner Paradise: I beg pardon?

The Witness: Secretary-treasurer.

Q. (By Mr. Cobey) How long have you held that position? A. Since June, 1918.

Q. Can you tell us what your duties are?

A. Well, largely the passing on of credit and the collection of money.

Q. Are you familiar, in a general way, with the duties of the persons employed at the warehouse?

A. Quite a few of them, yes, sir.

Q. And with the supervisory personnel of the company? A. Yes, sir. [211]

Q. Now, calling your attention to September 20, 1937, would you state what William S. Clark did at that time?

A. Mr. Clark at that time was working in the nursery department at the Hill Street retail store. Whether he had any particular authority there I couldn't say. He had been with us for a good many years and was thoroughly familiar with the nursery business.

Q. Could you state how long he had been employed at that time?

A. No, I couldn't but probably ten years.

Q. Mr. Sidebottom, I show you what purports to be a payroll record. I wonder whether that re-

(Testimony of Earl E. Sidebottom.)

freshes your recollection as to Mr. Clark's position on September 20, 1937.

(Handing document to witness.)

A. He evidently was in charge of the nursery department there.

Q. Could you state what position Mr. O. E. Johnson held during August and September of 1937?

A. Mr. O. E. Johnson was at that time assistant manager of the retail store, I am quite sure.

Q. Now, referring to this same period, Mr. Sidebottom, did you have a person in your employ, a person in the company's employ by the name of A. Stanley Williams?

A. Yes, sir.

Q. What did he do?

A. Well, he was my assistant in passing on credits and working [212] on collections, and he also worked on packet seed consignment accounts.

Q. Now, referring again to the same period, and as a matter of fact thereafter, do you know what Dorothy Turton did?

Trial Examiner Paradise: What is that name?

Mr. Cobey: Dorothy Turton, T-u-r-t-o-n.

The Witness: She was secretary to Mr. Schoenfeld.

Trial Examiner Paradise: Who is Mr. Schoenfeld?

The Witness: Vice-president of the company.

(Testimony of Earl E. Sidebottom.)

Q. (By Mr. Cobey) Now, you know Mrs. Betty Anderson? A. Yes, sir.

Q. Can you state what her duties were during the year 1940?

A. Filling orders in the packet seed department.

Q. Do you happen to know whether or not she was ever referred to as the head packer in that department?

A. Not that I know of. I think she was the only one.

Q. Was she the only one?

A. On that particular line of work, yes, sir.

Q. Do you happen to know when Erich Regan left the employ of the company?

A. Some time in the spring or summer of 1940.

[213]

Q. During certain seasons you have a mail order and radio department; is that correct?

A. Yes, sir.

Q. Approximately how long during the year is that department in existence?

A. About 60 or 90 days,—

Q. Sixty or 90 days?

A. —depending on what contracts we get.

Q. I see. What time of the year does that department function?

A. It is usually in the first quarter of the year, or starts in the first quarter of the year.

Q. Roughly during the planting season?

(Testimony of Earl E. Sidebottom.)

A. Yes, sir.

Q. Do you know how many persons are normally employed in that department?

A. It varies. I should say from 20 to 150.

Q. I see.

A. They are just temporary employees.

Q. And they are mostly women, are they not?

A. Mostly women, yes, sir; 95 per cent women.

Q. Now, as I understand it, the first floor of the warehouse is devoted to the shipping department. Is that right?

A. Shipping and receiving.

Q. Shipping and receiving? A. Yes, sir.

[215]

Q. And the second floor to the twist-ems department?

A. The second floor is mostly the office.

Q. The second floor is mostly the office. Where is the twist-ems department?

A. That is also on the second floor.

Q. Oh, that is also on the second floor. Do you know how many persons are employed normally in the twist-ems department?

A. That is a new department.

Q. When did it come in? Pardon me for interrupting you.

A. About a year ago. I think ten or a dozen employees.

Q. Would you explain to the Examiner what "twist-ems" are?



(Testimony of Earl E. Sidebottom.)

A. I happened to pick one up the other day. It is a little device made for the purpose of wrapping or tying up bushes of one kind of another to stakes, for the purpose of supporting them, and is used in place of string or raffia that used to be used for that purpose. It is made by running a piece of wire between two pieces of paper, which adhere through the application of hot tar. There is one of them, for instance (indicating). It is also used for the bunching of carrots. This is hardly an exhibit.

Q. Thank you. How many persons are normally employed in the office?

A. That depends on the season. It runs from eight or ten, I should say, to perhaps 20.

Q. Well, outside of the season during which the mail order [216] and radio department is in existence?

A. That is what I was referring to. That is a regular division of our business. The radio department is not.

Q. Which department is?

A. The office. Of course, that is a regular division of our business.

Q. And when it is operating at a time when the seasonal department is not operating, how many persons are normally employed in the office?

A. Oh, at the present time perhaps ten or a dozen; outside of the officials of the company, you understand.

(Testimony of Earl E. Sidebottom.)

Q. Yes, outside of the officials of the company. And approximately that same number would have been employed there or were employed there during the period here under discussion, that is, from the fall of 1937 to the present time? A. Yes, sir.

Q. Do certain of the officials of the company have their own private secretaries?

A. The vice-president, I believe, is the only one.

Q. Does Mr. Marks have a private secretary?

A. Yes, but Mr. Marks has only been down there for a very short period.

Q. I see. When did he come?

A. Perhaps two months ago.

Q. What does he do? [217]

A. He is the sales manager.

Q. Who is his secretary? What is her name?

A. Miss Roberts, I believe.

Q. Florence Roberts?

A. I don't know her first name. I would think it was Virginia. I am not positive about that.

Q. To the best of your knowledge, then only Mr. Marks and Mr. Schoenfeld have private secretaries?

A. Yes, sir.

Q. Mr. Meyberg does not?

A. No, sir. Mr. Meyberg has a stenographer who devotes her time almost entirely to one division of the work which is under Mr. Meyberg's direct supervision, and that is plant covers, sometimes called hot caps.

(Testimony of Earl E. Sidebottom.)

Q. What is her name?

A. Her name is South, Miss South.

Q. Now, what department do you have on the third floor of the warehouse?

A. That is the packet seed department.

Q. How many employees do you have in that department?

A. That varies according to the season. I wouldn't be able to say very closely on that.

Q. It doesn't run any steady figure?

A. No, sir.

Q. Is there anyone in charge of the third floor?

[218]

A. Mrs. Coahran is directly in charge. She works under Mr. Pieters' jurisdiction, however.

Q. Now, you understand, Mr. Sidebottom, don't you, that if there has been any change in the operation of these departments between August of 1937 and the present time, I would like you to indicate that?

A. No, I didn't get that, but there has been some change. As our business develops and we take on additional lines, there is naturally an increase in employment.

Q. Yes.

A. For instance, I think Miss South has come in during that period. I wouldn't be positive about that. She has been there about that length of time.

(Testimony of Earl E. Sidebottom.)

Q. I see.

A. Then this twist-ems stuff has come in.

Q. You said that has only been in there for a year or so? Is that right?

A. Yes, sir. Then we have also got some spray guns, which have come in recently.

Q. I see. What department, if any, occupies the fourth floor of the warehouse?

A. It is known as the broken package department, consisting largely of ounces—oh, small quantities of seed; I think over four ounces and on up to 50 pounds, or something like that, and the handling of what is called package goods, such [219] as insecticides and spray materials, things of that kind.

Q. Under whose supervision is that department, do you know?

A. That is under Mr. Hill.

Q. Under Mr. Hill. That is the Mr. Hill who has been referred to here as the traffic manager; is that right?

A. Yes, sir.

Q. You did have another Hill in your employ, didn't you?

A. Not that I know of.

Q. Did you have a Charles J. Hill?

A. It seems to me there was a Charles J. Hill there for a while. I think he was a truck driver, or something of that kind. He wasn't there very long, as I remember it.

Q. Now, that brings us up to the fifth floor. What is done on the fifth floor of the warehouse?

(Testimony of Earl E. Sidebottom.)

A. On the fifth floor they handle full sack goods; that is, 100 pounds, and in the case of some merchandise it runs up to 220. They are engaged mostly in filling orders for seeds in those quantities.

Q. Pardon me for back-tracking. How many employees do you normally have on the fourth floor?

A. On the fourth floor?

Q. Yes.

A. Well, in this season of the year normally about four or five. During the summer time normally about three. [220]

Q. (By Mr. Cobey) Mr. Sidebottom, do you recall an employee by the name of Eleanor Newmark?

A. Eleanor——

Q. Newmark?           A. Yes, sir.

Q. What did she do down there?

A. She was the clerk at the window.

Q. A receptionist?

A. No. She took care of the clerical work, stenographer for Mr. Marks at that time and anybody else that had letters to write, and she took in the cash at the end of the day and made up the deposit.

Q. You are referring to that time, to August and September, 1937?

A. Yes. She left there, I think, in January, 1940, to get married. [222]

Q. What was Mr. Marks doing at that time? He didn't hold his present position, did he?



(Testimony of Earl E. Sidebottom.)

A. No. He was manager at the Hill Street retail store.

Q. I see. Now, I think we have got you up to the fifth floor of the warehouse. How many employees are normally employed on the fifth floor?

A. Oh, anywhere from five to ten or twelve, perhaps.

Q. I see. It varies?           A. It varies.

Q. What determines the number of employees?

A. Well, the season of the year, the amount of work to be done. You see, on that floor they clean the seeds that come in there, and from then on for several months they are quite busy.

Q. Under whose supervision does that floor work?           A. Mr. Gates.

Q. Mr. Gates. What operations are carried on on the sixth floor of the warehouse?

A. Cleaning seeds and stacking it up in stacks until it is ordered down.

Q. Are the mills located on that floor?

A. Yes, sir.

Q. How many persons work on that floor?

A. How many persons?

Q. Yes. [223]

A. Anywhere from five to a dozen, depending on the season.

Q. Five to a dozen, depending on the season. Under whose supervision do they work?

A. Mr. Gates has control of that floor too.

(Testimony of Earl E. Sidebottom.)

Did I understand you first to ask about the sixth floor or the fifth floor?

Q. Well, I think I have asked you about both floors.

A. Yes. The fifth floor usually had one or two men; sometimes three.

Q. Oh, I see. So that the average number of employees there is just about two or three men?

A. Yes.

Q. And on the sixth floor it varies from five to ten, depending on the activities?

A. On the sixth floor it varies. On the sixth floor they also have two or three women, sometimes more than that, cleaning seeds and picking them.

Q. I see. Now, there is a nursery out at Van Nuys, isn't there?

A. Yes, sir.

Q. Who is in charge of that?

A. Mr. Clark at the present time.

Q. How long has he been in that position? That is Mr. William S. Clark?

A. W. S. Clark. I think he has been out there for two years [224] at the present time.

Q. And the Main Street store of the company is no longer in operation?

A. No longer in operation.

Q. When did that close down?

A. About three years ago, I think. Time passes, and you don't pay much attention to those things.

(Testimony of Earl E. Sidebottom.)

Q. Do you recall whether or not it was along about the start of 1939?

A. It was in May of either 1938 or '39. I think it was 1938. I think it was before 1939, although it might not have been. I am not positive.

Cross Examination

Q. (By Mr. Watkins) Just one question: You heard Mr. Hulphers testify about a Mr. Tabor's wage rate? A. Yes, sir.

Q. Can you tell me what Mr. Tabor was receiving on September 5th and 15th, 1940?

A. I understand he was getting \$90 a month on September 5th, and the 15th he was raised to \$100.

Redirect Examination [225]

Q. (By Trial Examiner Paradise) I just want to ask you a few questions about Mr. Frauenberger. What is his position?

A. Well, Mr. Frauenberger until recently was the city shipping clerk. By that I mean that he checked the loads onto the drivers' trucks, and he sometimes answered complaints over the telephone from customers as to whether deliveries had been made, and why not, and so forth.

Q. You say until recently that was his job. How long had it been his job, until recently?

A. Oh, for several years; five or six years, I judge.

(Testimony of Earl E. Sidebottom.)

Q. And what change took place in his job recently? [226]

A. Well, awhile back he was transferred onto the receiving desk in the same department.

Q. When was that?

A. I should say, roughly, two or three months ago.

Q. What does he do at the receiving desk?

A. Merchandise that comes in is checked in by him, and he makes a receiving record, showing the receipt of the goods, and then it is turned over to the elevator man to be taken to the proper department upstairs. I think possibly he also makes out bills of lading for outgoing shipments that go by rail or steamship, and sees to the dispatch of those items.

Q. Who was his superior when he was the City shipping clerk?

A. Mr. Hill at all times.

Q. Mr. Hill is now his superior officer?

A. Yes, sir.

Q. Now, did Mr. Frauenberger give orders to the people in the shipping department, that is, as City shipping clerk?

A. Well, he directed the men as to what their work was—what work they were supposed to do. He distributed the work to the different men, so far as that is concerned. You wouldn't call it giving orders. Beyond that, I don't know.

(Testimony of Earl E. Sidebottom.)

Q. To which men did he distribute work?

A. The truck drivers. I think he also on occasion called up the fourth and fifth floors regarding merchandise that was to be delivered and that hadn't come down, asked them where it [227] was, and tried to facilitate the work in that regard.

Q. Did Mr. Frauenberger do any manual work himself, or did he just keep records and that sort of thing?

A. No, he did manual work. He worked with the merchandise, helped load the trucks.

Q. Did he have the authority to reprimand truck drivers for not doing their work properly?

A. I don't think so; any more than one employee always trying more or less to bawl out another fellow, you know.

Q. If he told a truck driver to do certain work and the work wasn't done, what would be the procedure in a case like that?

A. I think if he made a point of it, all he could do was to refer it to Mr. Hill.

Q. Was Mr. Hill personally present on the shipping floor?

A. Most of the time, yes, sir.

Q. And was Mr. Hill's authority delegated to anybody in his absence?

A. Not that I know of.

Q. Who would take charge if Mr. Hill weren't down, if anyone?



(Testimony of Earl E. Sidebottom.)

A. Well, we usually went to Mr. Miller. When Mr. Hill wasn't around, we usually went to Mr. Miller to find out what was the situation, if anything, but as far as taking authority, we looked to Mr. Hill.

Q. And who is Mr. Miller?

A. Mr. Miller at that time was the receiving clerk. He has [228] since been ill and been in the hospital. Now, he is still home, still sick.

Q. Is that the job that Mr. Frauenberger now has,—receiving clerk?           A. Yes, sir.

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### ROY YOAKUM,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Roy Yoakum.

Trial Examiner Paradise: Roy——

The Witness: Yoakum, Y-o-a-k-u-m; 1063 South Oxford Avenue, Los Angeles.

Q. (By Mr. Cobey) Mr. Yoakum, are you now employed at Germain's?           A. Yes, sir. [229]

Q. How long have you been employed there?

(Testimony of Roy Yoakum.)

A. About—between four and five years.

Q. Would you state, very briefly, what your employment history has been there; in other words, what jobs you have held?

A. Well, when I started it was just general labor, piling sacks, and that line of stuff.

Trial Examiner Paradise: Will you keep your voice up, please, Mr. Yoakum?

The Witness: Yes.

Q. (By Mr. Cobey) Under whom were you working at that time? A. Mr. Gates.

Q. In the warehouse? A. Yes, sir.

Q. How long did you have that job?

A. Oh, about, somewheres around nine months, I guess.

Q. Then what did you do?

A. I ran the elevator.

Q. When did you go to work there?

A. On the elevator there?

Q. No, I meant when did you first go to work at Germain's? You said four or five years ago. Can you place it more definitely?

A. It was about the middle of '36. [230]

Q. How long were you on the elevator? That is, elevator operator, is that what you were?

A. Yes, sir. About three or four months.

Q. Under whose supervision did you work at that time? A. Mr. Gates.

Q. Then what did you do?

(Testimony of Roy Yoakum.)

A. I went to piling sacks.

Q. And again under Mr. Gates?

A. Yes, sir.

Q. Is that type of work, sack piling and sack sewing, known as the bull gang?      A. Yes, sir.

Q. Have you remained in that work since then?

A. Well, I have worked on the shipping floor some, just—

Q. Filled in?

A. Just helped, yes, sir.

Q. But at the present time you are still a member of the bull gang? Is that right?

A. Well, at this time now, I guess I would be considered a packer on the fourth floor.

Q. I see. Under whom do you work?

A. Mr. Nesbit.

Q. I see. How long have you been working up there?      A. Oh, something like a month.

Q. But up to a month ago you were still doing general labor [231] in the bull gang?

A. Well, I was working on the shipping floor at that time, just doing first one thing and then another; unloading a truck or checking it in, you know, something like that.

Q. Do you know Mr. Allan Hook?

A. Yes, sir.

Q. Now, during your working experience down there, have you ever worked under Mr. Hook?

(Testimony of Roy Yoakum.)

A. Yes.

Q. When did you work under Mr. Hook?

A. When I was in the bull gang.

Q. What did Mr. Hook do in connection with the bull gang?

A. Well, he was just—took orders from Mr. Gates and relayed them to us.

Q. Did he assign your work when you were working on the bull gang? In other words, tell you what to do?

A. Yes.

Q. How many men were employed in the bull gang?

A. Oh, at times there was 12, and there was times that there wasn't that many, depending on the season.

Q. Now, you say that for the last month you have worked for Mr. Nesbit on the fourth floor?

A. Yes, sir.

Q. Are your assignments of work given by Mr. Nesbit?

A. Yes, sir. [232]

Q. How many people are up there now?

A. There is five.

Q. Including yourself and Mr. Nesbit?

A. Yes, sir.

Trial Examiner Paradise: When you say that you take orders from him, what sort of orders do you take?

The Witness: Well, if there is something in stock

(Testimony of Roy Yoakum.)

he wants piled away, or some order he wants packed, then I pack it.

Trial Examiner Paradise: Anything else?

The Witness: That is about the only thing I do, is pack or pile stock away.

Q. (By Mr. Cobey) How much money were you getting when you worked in the bull gang under Mr. Hook?

Trial Examiner Paradise: I will permit him to answer. [233]

The Witness: Well, I made 30 cents an hour for about the—I believe it was for about the first nine months, I guess. Then I was put on what they call the monthly base. It was \$65 a month.

Q. (By Mr. Cobey) You made \$65 a month the entire time you worked on the bull gang?

A. I did get one increase and raise, which raised me to \$70.

Q. \$70 is the most that you made? \$70 a month is the most you made when you worked on the bull gang?

A. No. \$85 was the most I ever made in the bull gang.

Q. Now, how much do you get now?

A. \$100 a month.

Q. \$100. Now, Mr. Yoakum, calling your attention to the period of August and September, 1937, do you recall whether or not there were any meetings of employees in the shipping room of the warehouse? A. There was.



(Testimony of Roy Yoakum.)

Q. (By Mr. Cobey) Do you know when the first of those meetings occurred?

A. How they occurred?

Q. No, when the first of those meetings occurred? Can you [234] place it at all?

A. No, I can't remember the exact date. It was some time in August.

Q. That's August, 1937. Let's take the first meeting. How were you notified of that meeting?

A. There was someone came around through the building and told me about it. I can't remember who it was.

Q. Do you recall at what time of day the first meeting was held?

A. It was at noon time.

Q. Noon time?           A. Yes.

Q. Was it during or after working hours?

A. After working hours.

Q. Do you remember how many employees were at this meeting?

A. Oh, there was about, between fifteen and twenty, I would judge. [235]

Q. (By Mr. Cobey) This will be in the nature of a leading question. Will you state what Mr. Sage said at that meeting, to the best of your recollection?

A. Well, he said that he was—that he had heard that we were dissatisfied with the money that we were making and he was willing to help all that he could in order to get something going, to where

(Testimony of Roy Yoakum.)

we could all cooperate and not be any arguments, or anything like that, and he finally mentioned the fact that he understood there were a lot of independent unions in the city, and he understood they were doing pretty nicely, that he felt that it would be a pretty good thing if we did something in that line. Then that is kind of the way it went. So I think that he did mention the fact that if we joined an outside union, why, the company also had plenty of money, and they could close the doors down, and in order to keep the place going, maybe we had better, you know, have an independent union.

Q. That is the extent of your recollection as to what he said?

A. That is just about it.

Q. He was the only speaker at this meeting, was he?

A. Yes. However, there was some fellows that asked questions and he answered them. However, I don't remember the questions or the answers.

Q. Now, do you recall whether or not there were any other [236] meetings held in this shipping room of the warehouse?

A. Yes, there was another one held, I judge, about a week later.

Q. Will you tell us what happened at that meeting?

A. Well, at that he had got the attorney there. His name was Mr. Voorhees.

Q. Who is "he"?

(Testimony of Roy Yoakum.)

A. Mr. Sage. Well, I suppose he did anyway. He introduced him to us and——

Mr. Cobey: Pardon me. The first part of that answer may go out.

The Witness: (Continuing) —and there was a fellow from Cudahy. I think maybe he might have been the secretary of the Cudahy Independent Union, and they told us——

Q. (By Mr. Cobey) Just tell us what you know to your own personal knowledge. Pardon me for interrupting you. Go ahead. Just tell us what happened at that meeting, that you recall. I think you testified that Mr. Sage introduced Mr. Voorhees. Do you recall anything else?

A. No. He just went on with the meeting. He told——

Q. Do you recall anything of what Mr. Voorhees said?

A. He said that he drew up the by-laws and constitutions for the Cudahy Independent Union, and he would also do the same for us if we would give him the information to do so.

Q. How long did this meeting last, do you recall? [237]

A. About 30 minutes, I would judge.

Trial Examiner Paradise: Mr. Witness, will you please speak up loud, so that everybody can hear it?

The Witness: Yes.

Q. (By Mr. Cobey) During this same period

(Testimony of Roy Yoakum.)

do you recall whether or not an election was held out at the warehouse?

A. There was an election, yes, sir.

Q. Do you remember about when it happened?

A. Just after the second meeting, I think.

Q. That is the second meeting in the warehouse?

A. Yes, sir.

Q. Will you tell us what you know about the election?

A. Well, Mr. Hook—all I know about it is Mr. Hook, he brought a box with some ballots. He gave me one. I marked my ballot and put it in the box.

Q. Mr. Yoakum, I show you Board's Exhibit 8. Is this the type of ballot Mr. Hook handed you?

A. Yes, sir.

Q. Do you recall what time of day it was that Mr. Hook gave you this ballot?

A. It was about the middle of the morning.

Q. While you were working? A. Yes, sir.

Q. He brought it around to you?

A. Yes, sir. [238]

Q. And you then took it over and put it in the box? A. He had the box in his hand.

Q. Oh, I see.

A. I dropped it in the box.

Q. Was that the extent of your participation in the election? A. That's right, sir.

Q. How were you notified of the results of the election?

(Testimony of Roy Yoakum.)

A. I was on the sixth floor, and I just came down the aisle. There was three or four fellows there. I can't remember anybody that was there only Mr. Hook, and he had the results on a piece of paper then. That is the first that I knew about it.

Q. Prior to your voting in the election, had you been given any notice, that is, had you been informed that an election was going to take place?

A. I didn't get that.

Q. Would you read the question, please?

(The question was read.)

Q. In other words—pardon me—in other words, prior to your voting in the election, had anybody told you that there was going to be an election?

A. Yes. In the second meeting Mr. Sage says that there would be an election to determine whether we wanted to go into the union or not.

Q. Do you recall whether or not at that meeting Mr. Sage said any more about the election than that? [239]

A. No, I don't remember.

Q. Did you attend the meeting at the Hill Street store?

A. No, sir.

Q. (By Mr. Cobey) Now, Mr. Yoakum, I hand you Board's Exhibit 11-E, and I call your attention to the fact that there is a signature on there, "Roy O. Yoakum." Can you tell us whether or not that is your signature?

A. It is, sir.

Q. Can you recall the circumstances under which you signed Board's Exhibit 11-E?



(Testimony of Roy Yoakum.)

A. That we were willing to go into this Independent Union. [240]

Q. (By Mr. Cobey) Are you at the present time a member of the Consolidated Seedsmen's Union?

A. I am.

Q. Have you attended any meetings of that organization? A. About six, I judge, all told.

Q. Do you recall the dates of the meetings you attended?

A. Not exactly. I was at the first meeting—about the first two or three meetings. Then I didn't go to any more until, well, they were just scattered out. [241]

Q. Just here and there? A. Yes.

Q. Have you or have you not personally observed at any time any solicitation for membership in the Consolidated Seedsmen's Union?

A. No, sir.

Q. Now, you have paid your dues in the Consolidated Seedsmen's Union, haven't you, regularly?

A. Yes, sir.

Q. Will you tell us when and where you paid your dues?

A. The usual thing, it was in the mornings; I judge about the middle of the mornings, when I usually paid my dues, on the average.

Q. How were they collected from you?

A. Well, the representative just came around with the book, and I paid my dues, and he gave me a receipt.

(Testimony of Roy Yoakum.)

Q. You don't recall any specific occasion, do you, as to which you could give us the details as to the persons present or the person who collected the dues from you?

A. Well, Allan Hook, he collected dues for a while; and Emily Lilly, she collected the dues, collects the dues now. [242]

Q. (By Mr. Cobey) How were you notified of the general membership meetings of the Consolidated Seedsmen's Union?

A. There was a bulletin on the time clock.

Q. Mr. Yoakum, are you at the present time a member of the union affiliated with the American Federation of Labor?      A. Yes, sir.

Q. That is the Grocery Warehousemen's Union?

A. Yes, sir.

Q. Do you recall when you joined?

A. It was September 20th when I paid my initiation fees.

Q. Do you recall whether or not you made application for membership prior—

A. I did, September 5th.

Q. 1940?      A. Yes, sir.

Q. Then you were initiated on September 20th, did you say? Or on what day, 1940?

A. Yes, sir. [243]

Q. Now, Mr. Yoakum, you were in the court room during the direct examination of Mr. Hulphers, were you not?      A. Yes, sir.

(Testimony of Roy Yoakum.)

Q. Do you recall that he testified as to the meeting held, according to his testimony, on September 3rd in Mr. Meyberg's office, just after quitting time?      A. There was.

Q. Were you present at such a meeting?

A. Yes, sir.

Q. Do you recall what happened at that meeting?

A. Well, there was about 20 fellows, I guess, maybe more, and I understand that there was some of the guys had been in to see Mr. Meyberg about getting more money.

Q. Well, don't tell us what you understand. Just tell us what you actually saw and heard in that meeting; in other words, what was said and what happened.

A. Well, when we all got in Mr. Meyberg asked did we have a spokesman. We said, no. And he also asked Mr. Hulphers if he wouldn't be the spokesman, and he said, "No."

Then he told us that he had been intending to give us more money, but he had been so busy that he hadn't got to it yet.

Q. Do you have any recollection as to the exact date upon which this meeting occurred?

A. No. It was about that time, but I don't—

[244]

Q. Do you recall whether or not it was before or after your making application for membership in the Grocery Warehousemen's Union?

(Testimony of Roy Yoakum.)

A. I don't remember that.

Q. Is that the extent of your recollection as to what happened at that meeting?

A. That's right, sir.

Q. Now, did you attend the dinner at the Terminal Club?      A. Yes, sir.

Q. And were you present at the meeting in the office after that dinner?      A. Yes, sir.

Q. How many people were at that meeting?

A. Oh, there were 17, or maybe 20.

Q. Can you tell us what happened at that meeting?      A. Well, we just had lunch, that's all.

Q. I mean—I am not referring to the dinner at the Terminal Club. I am referring to the meeting that occurred after the dinner. Were you present at that meeting?      A. Yes, sir.

Q. What happened there?

A. Well, Mr. Meyberg said that before we made any step to, well, join any unions, or anything, to give him a chance to see if he couldn't cooperate and meet our demands, and the same thing, that he was intending to give us a raise, but he hadn't [245] got to it on account of being so busy.

Q. Was Mr. Schoenfeld there?

A. Yes, sir.

Q. Is that all you recall in regard to that meeting?      A. That's right, sir.

Q. Now, do you know whether or not during this period as to which you have just been testify-

(Testimony of Roy Yoakum.)

ing there were any petitions circulated among the employees in regard to wage increases?

A. Yes, there were.

Q. Will you tell us what you know about those petitions?

A. Well, all I know, there was one petition that was brought to me. It was for \$110 a month. I signed it.

Q. Who brought it to you?

A. I am not sure, but I think Mr. Hook did.

[246]

#### Cross Examination

Q. (By Mr. Watkins) Do I understand, Mr. Yoakum, that at this first meeting, at which Mr. Voorhees was present, in the warehouse, it was Mr. Sage who suggested that an election would be held? Is that correct?

A. Mr. Voorhees wasn't at the first meeting.

Q. I am speaking now of the first meeting at the plant at which Mr. Voorhees was present.

A. He wasn't present at the first meeting at the warehouse. [247]

Q. No. All right. To clarify it, I will ask you: At the first meeting Mr. Voorhees was not present; that is correct, is it not? It was Mr. Sage and a group of men?

A. That's right, sir.

Q. Then you had a meeting following that, at which Mr. Voorhees was present,—correct?

A. Yes, sir.



(Testimony of Roy Yoakum.)

Q. Now, at that meeting the suggestion was made that an election be held to determine what the men wanted? Correct? A. Yes.

Q. And that suggestion was made by Mr. Sage? Correct? A. Yes.

Q. All right. Now, then, did Mr. Sage immediately after that leave the meeting?

A. He didn't leave until the meeting was over.

Q. Mr. Sage was present throughout that entire meeting; is that correct? A. That's right.

Q. Mr. Gates and Mr. Hill were present at the start of the meeting? Is that right.

A. That's right.

Q. And they left shortly after the meeting started? A. Yes, sir.

Q. I understood you to testify that you worked in the bull gang under Mr. Hook Is that right?

[248]

A. That's right.

Q. Did Mr. Hook also work with you and the other men in the bull gang, work with his hands?

A. Yes.

Q. What about Mr. Nesbit? Does he also work with his hands along with the other men?

A. Yes.

Q. I believe you testified that Mr. Sage at either the first or second meeting in the plant made some comment about an outside union coming in there. Do you remember at which meeting that was?

(Testimony of Roy Yoakum.)

A. I don't remember saying anything that he said about an outside union coming in.

Q. All right. Now, a little differently then: Mr. Sage didn't talk to you at the second meeting at the plant, did he, when Mr. Voorhees was present, other than to introduce Mr. Voorhees?

A. I don't remember.

Q. All right. At the first meeting at the plant he did talk to you? Correct?           A. Yes, sir.

Q. State what he said.

A. He said that he understood there were a lot of us dissatisfied with the money we were getting; he would also like to work out some plan where we could all agree, and he also [249] said about knowing several places in town that had independent unions, and would try and work one out there.

Q. Is that all you can remember about it?

A. That's about all.

Q. Did he say anything about the plant shutting down operations, or anything of that kind?

A. He did.

Q. What did he say?

A. He said that, after all, he felt it was our place to keep the place going, the same as the company, because they had plenty of money and they could close their doors any time, and it was only our duty, in order to keep it going, so that we would have a job.

Q. Is that all he said about that matter?

(Testimony of Roy Yoakum.)

A. That's all I remember. [250]

Q. Do you remember anyone at the second meeting, at which Voorhees was present, having anything to say, besides Mr. Voorhees and Mr. Sage?

A. Mr. Hill and Mr. Gates asked whether a man that had the right to hire and fire could belong to the union. They were told, "No."

Q. That was just prior to the time they left the meeting? A. That's right, sir.

Q. Did anybody else have anything to say at that meeting?

A. There was several of the fellows asking questions, but I don't remember them.

Q. You don't remember the substance of any of them? A. No, sir.

Q. Had anyone approached you, prior to this first meeting with Mr. Sage at the plant, about joining the American Federation of Labor? [251]

A. There was some talk going on through the plant there about it.

Q. Did anyone talk to you about it?

A. Not particularly me. They did talk between each other around.

Q. Had you been in on any of the discussions concerning joining the American Federation of Labor? A. No, sir.

Q. Where did you hear the discussions?

A. On the job. [252]

WILLIAM A. EPPERSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please, and spell your last name.

The Witness: William A. Epperson, E-p-p-e-r-s-o-n; 231 East 75th Street, Los Angeles.

Q. (By Mr. Cobey) Now, Mr. Epperson, you are employed at Germain's? A. Yes, sir.

Q. How long have you been employed there?

A. Five years this May.

Q. What sort of work have you done?

A. Driving truck.

Q. You are a member of the Consolidated Seeds-men's Union? A. Yes, sir. [253]

Q. You have been an officer of that Union?

A. Yes, sir.

Q. What positions have you held?

A. Representative and director, both.

Q. For the shipping department? A. Yes.

Q. Now, as a representative, it was your duty to collect dues; is that right? A. Yes, sir.

Q. Will you tell us how you went about that?

A. Well, we had a little book there, and I used to go in the office there, where the shipping clerk was, and the boys would come by and pay me the money, and I would put it down in the book, you

(Testimony of William A. Epperson.)

know, write it down "Paid", so they could see, and that's about all there was to it. That was about the only chance I had, because I wasn't around there in the noon hour or after work.

Q. Because of your driving a truck?

A. Yes.

Q. And it was because of your work that you left the book there in the shipping clerk's office, or took the payments there?      A. Yes, sir.

Q. Have you participated in any bargaining conferences with the management? [254]

A. Well, yes.

Q. Did any of those conferences occur during working hours?      A. No. [255]

Q. Now, as a director of the Consolidated Seedsmen's Union, how were you informed of the meetings of the board of directors?

A. From the secretary.

Q. You mean she came around to you and told you a meeting was going to be held?

A. No. I am pretty sure she sent a note in an envelope down to my department, and I would get it when I come in.

Mr. Cobey: That is all.

#### Cross Examination

Q. (By Mr. Watkins) You never got permission from the management to collect dues in the manner you have suggested, did you? [256]

A. No.



## BLANCHE EATON,

a witness called by and on behalf of the National Labor Relations Board, being duly sworn, was examined and testified as follows:

## Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Blanche Eaton, E-a-t-o-n; 506 North New Hampshire.

Trial Examiner Paradise: Will you give me that again, Miss Reporter?

(The answer was read by the reporter.)

Q. (By Mr. Cobey) Mrs. Eaton, you are employed by Germain's? A. Yes, sir.

Q. How long have you been so employed?

A. Approximately six years.

Q. What do you do?

A. Assistant to Miss Court, the auditor. [257]

Q. (By Mr. Cobey) You are a member of the Consolidated Seedsmen's Union? A. Yes, sir.

Q. Have you ever been an officer of that union?

A. Yes, sir.

Q. Can you tell us what offices you held?

A. Director.

Q. Were you ever secretary of the union?

A. Yes, sir.

Q. Do you recall your term of office as secretary? A. No. [258]

(Testimony of Blanche Eaton.)

Mr. Watkins: Isn't that in the exhibit?

Mr. Cobey: Yes, I think it is.

Q. (By Mr. Cobey) I think I can refresh your recollection on that.

(Handing document to witness.)

A. Yes, sir.

Q. What was your term of office?

A. You mean the time?

Q. Yes.

A. 1937 and '38, director; and secretary '38 and '39, I believe.

Q. As a matter of fact, you were director from September 20, 1937 to November 2, 1937, when Fern Wingrove took your place as director? Is that not right? A. Yes, sir.

Q. And then you were secretary from November 1, 1938 to April 4, 1939? Is that not right?

A. Yes, sir.

Q. Now, as secretary, you were responsible for notifying the membership of the general meetings, and also the Board of Directors of the meetings of the Board of Directors, were you not?

A. Yes, sir.

Q. How did you do that?

A. By a notice on the time clock. [259]

Q. For the general membership? A. Yes.

Q. How about the board of directors' meeting?

A. I believe by the same method and also personal contact.

(Testimony of Blanche Eaton.)

Q. In other words, you went around personally and told them about the meeting?

A. Yes, sir.

Q. Did that occur during working hours or after working hours?

A. No, out of working hours, at noon.

Q. To the best of your recollection, you never notified a director of a meeting during working hours?

A. No, sir.

Q. And your only form of notice to them was either by posting a notice or by personally contacting them?

A. Yes, sir.

#### Cross Examination

Q. (By Mr. Watkins) Did you ever receive any special permission from the management to post those notices on the time clock?

A. No, sir.

Q. Did you ever see any other notices on or around the time clock, in the same places that these notices were put, other than of the Seedsmen's Union membership meetings? [260]

A. I don't remember.

Q. Do you remember notices of deaths or flowers, or things of that kind, being there also?

A. Yes, sir.

Q. Other notices of that character?

A. Yes, sir.

VIOLET ASHLEY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Violet Ashley, A-s-h-l-e-y; 10201½ West 42nd Street.

Trial Examiner Paradise: Now Miss Ashley, will you please keep your voice up so that everybody can hear you?

Q. (By Mr. Cobey) Miss Ashley, you are employed down at Germain's?

A. Yes, sir. [261]

Q. What do you do down there?

A. I am secretary to Mr. Schoenfeld.

Q. How long have you been his secretary?

A. About a year and a half.

Q. That is, you became his secretary in the latter part of 1939; is that correct?

A. Yes, after Miss Turton left.

Q. After Miss Turton left? A. Yes.

Q. That is, you succeeded Miss Turton?

A. That's right.

Q. Now, you have held office in the Consolidated Seedsmen's Union, have you not? A. Yes, sir.

Q. I understand that you were the secretary of the Consolidated Seedsmen's Union from February

(Testimony of Violet Ashley.)

9, 1938 to November 1, 1938, and that you were a representative for the office from August 8, 1938 to January 1, 1941. Does that accord with your recollection?       A. I think so.

Q. Now, as secretary, you notified the general membership of the general membership meetings by posting notices on the time clock, did you not?

A. Yes, sir.

Q. How did you notify the Board of Directors of their meet- [262] ings,

A. Well, I believe I did it the same way, or sometimes just by word of mouth, or called the Hill Street store and Van Nuys by 'phone.

Q. By calling them over the telephone?

A. Yes.

Q. Called the proper employees?

A. I think I did it both ways.

Q. Do you recall whether or not you ever did it during working hours?       A. Yes, I believe so.

Q. As secretary, you were responsible for the minutes of the organization. Did you keep any other files? Did you keep the general files, the correspondence and what not?

A. Yes. I had that in a box.

Q. Where did you keep those files and the minutes?

A. I believe Miss Gates had them part of the time.

Q. They were in her custody?       A. Yes.



(Testimony of Violet Ashley.)

Q. Do you know where she kept them?

A. No, I don't.

Q. It was your job to type up the minutes of the meetings?      A. Yes, sir.

Q. When did you do that?

A. I did it at home. I had a typewriter at home.

[263]

Q. You used your typewriter at home?

A. Yes, sir.

#### Cross Examination

Q. (By Mr. Watkins) Did you ever get permission from the management to post the notices on or around the time clock?

A. Why, I don't recall. I think they had always been doing that. I did it myself.

Q. I see. You saw other notices around the time clock besides those?      A. Yes.

Q. Put up by employees on various matters?

A. Yes.

Q. Were you secretary and representative of the union, that is, the Consolidated Seedsmen's Union, prior to the time that you became Mr. Schoenfeld's secretary?

A. I was secretary of the union before I became Mr. Schoenfeld's secretary.

Q. And office representative also?

A. Yes, I believe so. [264]

Q. (By Trial Examiner Paradise) Just one

(Testimony of Violet Ashley.)

question, Miss Ashley: What was your job before you became secretary to Mr. Schoenfeld?

A. I was in the billing department.

Q. What was that?

A. I billed the orders that went out on the trucks, the city deliveries. [265]

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### FERN WINGROVE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Fern Wingrove, F-e-r-n W-i-n-g-r-o-v-e; 1421 West 51st Place.

Q. (By Mr. Cobey) Miss Wingrove, you are employed at Germain's? A. That's right.

Q. How long have you been so employed?

A. Oh, twelve years this March.

Q. What do you do down there?

A. I am a comptometer operator. I work under Miss Court.

Q. I see. Have you ever done any work for Mr. Meyberg or Mr. Schoenfeld?

A. Not unless they asked me to add a column of figures, something that takes five minutes or less.

(Testimony of Fern Wingrove.)

Q. I see. Now, you are a member of the Consolidated Seedsmen's Union, aren't you? A. Yes.

Q. I think I am correct in saying, am I not, that you were the director for the office from November 2, 1937, to the [266] first of this year?

A. I think that's correct.

Q. A great many of the meetings of the board of directors were held out at your home, weren't they? A. Yes.

Q. And you were responsible for certain of the social functions of the union, weren't you?

A. Well, I helped out.

Q. I mean such as the Federal Theatre performance, the two-a-day, and the showing of *The Drunkard*, and what not?

A. Yes, I made arrangements for the tickets.

Q. Can you tell me whether or not it was customary to have a social meeting after the business meeting of the general membership? [267]

The Witness: Well, sometimes we had them, and sometimes we didn't.

Q. (By Mr. Cobey) Sometimes you did not. Now, calling your attention to the year 1940, you attended the meetings of the general membership during that year, did you not?

A. I believe I have only missed about two general meetings.

Q. That is what I thought. Now, how many of

(Testimony of Fern Wingrove.)

the girls in the office ordinarily came to those meetings during the last six months in 1940 and up to the present time?

A. Oh, about half, I imagine, of the office members.

Q. How many would that be?

A. Oh, about ten.

Q. And what was the average attendance at those meetings?

A. Well, in all the time I attended, there was only two times that we didn't have a meeting.

Q. A quorum of fifteen?

A. Yes. All the other times there was fifteen and over. Well, sometimes it run about thirty, from twenty-five to forty.

Q. Now, during the last six months of 1940 up to the present time, the last nine months in other words, what did the average attendance run?

A. Well, the same. It varied, you see. Different times of the year people are on vacations, and it is just like every- [268] thing else around there, it varies.

Q. I see. Now, as director you participated in several bargaining conferences with the management, did you not?      A. Yes.

Q. Did any of those bargaining conferences occur during working hours, do you recall?

A. Yes.

Q. Were you docked for the time that you spent in the bargaining conferences?      A. No.

(Testimony of Fern Wingrove.)

Q. During the time that you were a director, do you recall any demands that the Consolidated Seedsmen's Union made on the management, which were refused?

A. I only recall one.

Q. What demand was that?

A. Two weeks vacation with pay.

Q. That was put forward at the conference of May 12, 1938, as you recall?

A. Well, I don't know. It is in the minutes.

Q. Yes. At the time that this vacation demand was refused, did the Consolidated Seedsmen's Union ever make any threat of economic action, in the event its demands were not acceded to?

A. No.

Q. Now, during the time that you were a director, did the Consolidated Seedsmen's Union ever ask the company for a [269] written contract covering wages, hours and working conditions?

A. I think we were about to take that up when I was not re-elected.

Q. Now, didn't the Consolidated Seedsmen's Union have some new cards printed in the fall—last fall, 1940?

A. Yes.

Q. And didn't you distribute some of those new cards to the membership?

A. I distributed them in the office division.

Q. Do you recall whether or not you spoke to Jack Thrift or Charles Loy about their securing the new cards?

A. Yes, I spoke to them.



(Testimony of Fern Wingrove.)

Q. You did?           A. Yes.

Q. Do you recall when and where you spoke to them?

A. Oh, I spoke to them as they were passing by.

Q. While you were working?

A. Oh, I don't remember. I talked to them sometimes during my lunch hour, if I happened to see them.

Q. Wherever you happened to see them?

A. Yes.

Q. And you may have talked to them in the office?

A. I may have talked to them during business hours. [270]

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ALFRED A. FREEMAN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Alfred A. Freeman.

Trial Examiner Paradise: Arthur?

The Witness: Alfred A. Freeman, 9124 Menlo Avenue.

(Testimony of Alfred A. Freeman.)

Q. (By Mr. Colby) Mr. Freeman, you are employed by Germain's, are not you?

A. Yes, sir.

Trial Examiner Paradise: Is the name Freeman or Friedman?

The Witness: Freeman, F-r-e-e-m-a-n.

Trial Examiner Paradise: F-r-e-e-m-a-n?

The Witness: Yes, sir.

Q. (By Mr. Cobey) How long have you been employed down there?

A. Oh, about twelve years.

Q. Can you, very briefly, give us an idea of your employment experience down there? In other words, what did you do and [271] where did you work?

A. Well, I started——

Q. What have you been doing?

A. ——in the bull gang work. That is sack piling and sack sewing, and I also——

Q. When did you start there?

A. The first time I started in '26, about the middle of July.

Q. How long did you work at that time?

A. Well, I worked five and a half years, clear up to 1932, the 15th of January.

Q. During that time you worked in the bull gang at sack piling and sack sewing?

A. Yes, sir.

Q. Then you went back to work later at Germain's?

A. Yes. I went back there in '33, in the fall, oh, about October.

(Testimony of Alfred A. Freeman.)

Q. You went back on the bull gang again?

A. Yes, sack sewing.

Q. Have you been on the bull gang since then?

A. Yes.

Q. Now, does Mr. Hook work with the bull gang?

A. Yes.

Q. What does he do?

A. Well, he acts as a sort of a straw boss. He takes orders from Mr. Gates, then he relays the work to us. [272]

Q. What have you been getting while you have been working on the bull gang?

A. Well, during the depression I was getting \$65, and in '36 I believe I got—

Trial Examiner Paradise: Was that after the depression?

The Witness: Yes.

Trial Examiner Paradise: 1936?

Mr. Watkins: Who knows!

The Witness: (Continuing) —I got a \$10 raise.

Q. (By Mr. Cobey) You got a \$10 raise to \$75 a month? A. Yes.

Q. Then you have been raised since that time?

A. Yes.

Q. When did those raises occur, do you recall?

A. Yes. I got raise in '37.

Q. What was that to? A. \$10.

Q. To \$85 a month? A. Yes.

Q. It went up in 1937? A. Yes.

(Testimony of Alfred A. Freeman.)

Q. Any raises since then? A. Yes.

Q. When did they occur? And how much were they? A. Well, I got one in '39. [273]

Q. All right. What did that bring you to?

A. \$90.

Q. Did you get one last fall? A. Yes.

Q. How much did that bring you to?

A. To a hundred.

Q. Now, calling your attention to the period of August and September, 1937, were you ever approached at that time by any A. F. of L. organizers?

A. No.

Q. Did you see any of them about the plant, that is, the warehouse?

A. Yes, I seen two or three fellows around the plant at that time.

Q. Around the warehouse? A. Yes.

Q. Where did you see them?

A. On the shipping floor.

Q. On the shipping floor?

A. Yes, in front of the platform.

Q. Do you happen to know whether or not any of the employees joined the A. F. of L. at that time?

A. No.

Q. You don't know, or none of them did? Which do you mean? A. I don't know. [274]

Q. You don't know whether any of them did?

A. No.

(Testimony of Alfred A. Freeman.)

Q. But none did, to your knowledge? Is that right?      A. That's correct.

Q. When did you join the A. F. of L.?

A. In 1940. That is, I signed up on September 5th; was initiated on September 20th.

Q. By "signed up September 5th," you mean you signed a membership application?

A. Yes.

Q. Bringing you back again to the period of August and September, 1937, do you recall a meeting or any meetings in the shipping room of the warehouse?      A. Yes.

Q. Do you recall when the first of those meetings occurred?

Mr. Watkins: May I suggest, Mr. Cobey, that perhaps we could stipulate to this, because this is only cumulative. I understand there is no dispute about it.

Mr. Cobey: All right. I will withdraw that question.

Q. (By Mr. Cobey) You were present at a meeting in the warehouse at that time?      A. Yes.

Q. I mean in the shipping room?      A. Yes.

Q. Do you recall the first of those meetings?

[275]

A. Yes.

Q. Will you tell us to the best of your recollection what Mr. Sage said at those meetings or at



(Testimony of Alfred A. Freeman.)

that meeting—pardon me—the first of the meetings?

A. Well, Mr. Sage come out to us there and he stood on—on something, a platform there.

Q. You mean a platform where seeds are piled?

A. Yes. He started out by saying that he heard rumors about the plant about joining a union, and he also said, “Why not form an independent union?” And he also said that it would be much cheaper than an outside union.

Q. Do you remember anything else?

A. Yes. He also said that Mr. Meyberg and Mr. Schoenfeld, they had enough money, they could close the doors down and still live for the rest of their days.

Q. Is that the extent of your recollection?

A. Yes.

Q. How long did this meeting last?

A. Oh, about half an hour.

Q. Do you remember a second meeting at the same location?      A. Yes.

Q. That occurred about a week after the first one, is that right?      A. Correct.

Q. Now, that was held after quitting time, was it, in the [276] same location?      A. Yes.

Q. Do you recall what happened at that meeting? You were present, weren't you?

A. Yes.

Q. What happened at that meeting?

(Testimony of Alfred A. Freeman.)

A. Well, Mr. Sage introduced Mr. Voorhees, and also this fellow from Cudahy, I don't recall his name. Then Mr. Voorhees addressed the meeting by saying that he had plenty of experience on unions, and he also said he had some constitutions and by-laws; I believe he said a copy of the constitutions and by-laws of the Cudahy Company.

Q. You mean of the union out there, don't you?

A. How is that?

Q. The constitution and by-laws of the Cudahy Independent Union?           A. Yes.

Q. Do you remember anything else as to what he said?

(No response.)

Q. Mr. Freeman, I hand you Board's Exhibit 8. Have you seen a ballot like that before?

A. Yes.

Q. You recall that an election was held down in the warehouse——           A. Yes. [277]

Q. —along about this same time?

A. After the second meeting.

Q. After the second meeting in the warehouse?

A. Yes.

Q. How were you informed that an election was to be held?           A. Through grapevine.

Q. You just heard about it?           A. Yes.

Q. Do you recall whether or not you heard about it at that second meeting in the warehouse?

A. I don't get the question.

(Testimony of Alfred A. Freeman.)

Q. Do you have any recollection as to whether or not you heard about the election at the second meeting in the warehouse, the meeting where Mr. Voorhees spoke?      A. Yes, I believe I did.

Q. Do you remember who told you about the election?

A. I believe it was Mr. Voorhees said it,—he spoke something.

Q. Do you remember anything about what he said?

A. Yes. I believe he said that it would be proper to hold an election so everybody would be satisfied.

Q. You voted in the election?      A. Yes.

Q. When and where did you vote?

A. On the fifth floor. [278]

Q. How did you vote?

A. Well, Mr. Hook, I believe, he brought a box over and he handed me a piece of paper, and I voted.

Q. That was a piece of paper similar to Board's Exhibit 8?      A. Yes.

Q. The one I just showed you?

A. Yes. And I put it back in the box.

Q. Was that while you were working?

A. Will you repeat that question?

Q. Was that while you were working?

A. Yes.

Q. Do you happen to recall whether it was in the morning or the afternoon?

A. In the morning.

(Testimony of Alfred A. Freeman.)

Q. Did you attend the Hill Street store meeting?

A. No.

Q. Now, you joined the Consolidated Seedsmen's Union, didn't you?      A. Yes.

Q. Do you remember when and where you joined?

A. In the fourth meeting, I believe.

Q. At the fourth meeting?      A. Yes.

Q. Where was that meeting held?

A. At the Herman's Hall, at 25th and Main.

[279]

Q. Now, you have paid your dues in the Consolidated Seedsmen's Union regularly——

A. Yes.

Q. —haven't you?      A. Yes.

Q. Do you recall how you ordinarily paid your dues, and to whom you paid them?

The Witness: Well, I paid them in the plant to Emily Lilly.

Q. (By Mr. Cobey) Do you remember anybody else to whom you paid them?

A. Mr. Hook, and also Mr. Hartline.

Q. That is Mr. Harry Hartline?

A. Yes. And Mrs. Otto.

Q. That is Mrs. Bobbie Otto?

A. Yes. I guess that's all I can remember.

Mr. Cobey: Will you mark this, please, for identification?

(The document referred to was marked as Board's Exhibit 15, for identification.)

(Testimony of Alfred A. Freeman.)

Q. (By Mr. Cobey) Mr. Freeman, I hand you Board's Exhibit [281] 15, for identification. Will you tell us what it is?

Mr. Watkins: We will stipulate it in. It speaks for itself.

Mr. Cobey: This document purports to be a dues receipt for the Consolidated Seedsmen's Union, dated November 4, 1940. I would like to offer it.

Mr. Watkins: No objection.

Q. (By Mr. Cobey) Do you recall any specific instance when Miss Lilly collected dues from you?

A. Yes.

Q. You will note this is dated November 4, 1940. Do you remember where you were at the time those dues were collected? [282]

A. Yes.

Q. Where were you?

A. On the fifth floor.

Q. On your job?

A. Yes. On the sixth floor also.

Q. Well, did she come up to you and collect your dues at that time? A. Yes.

Q. Do you recall whether she collected them on the fifth floor or the sixth floor on that occasion?

A. On the sixth floor.

Trial Examiner Paradise: Who is Miss Lilly?

The Witness: Miss Lilly works on the fifth floor.

Trial Examiner Paradise: In what capacity?

The Witness: She is an assistant to Mr. Gates, in his office.



(Testimony of Alfred A. Freeman.)

Trial Examiner Paradise: Is that the only time you ever paid your dues to Miss Lilly?

The Witness: I have been paying dues to her for the last six months, I think.

Trial Examiner Paradise: Well, are they always paid in that way, or were other means of paying the dues employed? Did you pay your dues in other places than in the plant itself to Miss Lilly?

The Witness: No. [283]

Trial Examiner Paradise: I beg pardon?

The Witness: No.

Trial Examiner Paradise: Did you pay your dues at other times than during working hours to her?

The Witness: No.

Q. (By Mr. Cobey) Now, Mr. Freeman, I call your attention to the meeting in Mr. Meyberg's office right after quitting time, in September of 1940. You were at that meeting, were you not?

A. Yes. [284]

Q. Were you at the second meeting, the one after the dinner at the Terminal Club?

A. Yes.

Q. Do you have any recollection as to what happened at that meeting?

A. Yes, I believe I do.

Q. What do you recall?

A. Well, Mr. Meyberg come up there and put out a blackboard, showed us what he had lost and what he made.

(Testimony of Alfred A. Freeman.)

Q. Do you remember anything else?

A. Yes. He also said we would get a raise starting from September 4th, I think is what he said.

Q. Is that all you recall?           A. Yes.

Q. Do you remember him saying anything about bringing the doctor in?           A. No.

Q. You don't recall that?           A. No.

Q. But you remember the time that you got that pay increase last fall?           A. Yes. [285]

Q. When did you get it?

A. October 4th, I believe.

Q. Was it as of October 4th?

A. From September 4th.

Q. From September 4th. Wasn't it from September 15th?

A. No, I think it was from September 4th.

Q. From September 4th?           A. Yes.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Freeman, you said you made application to join the American Federation of Labor on September 5th, 1940. Had you considered joining that organization for some little time prior to the time that you actually put in your application?           A. I don't remember.

Q. Where did you join the A. F. of L., or where did you file your application? Where did you sign it?

A. At the Grand Theater Building.

(Testimony of Alfred A. Freeman.)

Q. Did you go down there intending to sign it, or had you discussed it and talked it over beforehand, as to whether or not you were going to join?

A. I don't remember.

Q. You don't remember of ever discussing——

A. No. [286]

Q. —with anybody about joining the A. F. of L. before you did it?

Trial Examiner Paradise: Answer out, Mr. Witness.

Mr. Watkins: I suppose the record will show the pause here, Mr. Examiner.

Trial Examiner Paradise: Yes. The record may show the witness is hesitating. [287]

Mr. Watkins: Now, may I have the question read?

Trial Examiner Paradise: Read it, Miss Reporter.

(Thereupon, the question referred to was read by the reporter as follows:

“Q. You don't remember of ever discussing with anybody about joining the A. F. of L. before you did it?”)

The Witness: Yes.

Q. (By Mr. Watkins) You do remember of discussing it with someone,——

A. No, sir.

Q. —or you do not?      A. No.

Q. Now, going back, Mr. Freeman, to the first meeting at the [288] warehouse with some of the employees and Mr. Sage. You remember the meeting some time in August, I believe, of 1937?

(Testimony of Alfred A. Freeman.)

A. Yes.

Q. I believe you testified that the meeting lasted approximately half an hour?      A. Yes.

Q. Did anyone talk besides Mr. Sage?

A. In that first meeting?

Q. Yes.      A. No.

Q. He was talking most of the time while the meeting took place, and the only things you can remember that he said at this time are the things that you testified to?      A. Yes.

Q. (By Trial Examiner Paradise) Did you go to the A. F. of L. in September of 1940? When did you join, in August or September?

A. September 20th.

Q. Did you go alone or in a group?

A. In a group.

Q. How many in the group? [289]

A. About—about eight.

Q. Did you happen to go together by accident or had you talked together about going, before you went down?

A. No. I went with the group, but I didn't talk nothing about it.

Q. Well, how did you happen to go with them?

A. Well, I knew about it.

Q. You knew about it. You mean you knew that the others were going?      A. Yes.

Q. How did you know that?

A. Through grapevine.

Q. Through the grapevine?      A. Yes.

(Testimony of Alfred A. Freeman.)

Q. Well, the grapevine speaks, doesn't it?

A. Yes.

Q. That is, you heard somebody say it? Is that right?

A. That's it.

Q. And where did you hear somebody say it?

A. Around the building.

Q. Around the building?           A. Yes.

Q. What was it that you heard the grapevine say?

A. That there would be several of the guys would be going over to join the A. F. of L., so I decided to go up in—of [290] my own accord.

Q. Do you remember which part of the grapevine it was that told you about this?

A. I don't.

Q. You don't remember?           A. No.

Trial Examiner Paradise: I haven't any further questions.

Mr. Watkins: I have just one I would like to ask.

Trial Examiner Paradise: Very well.

Q. (By Mr. Watkins) Did you ever pay any dues to the Consolidated Seedsmen's Union during the noon hour?           A. No, sir.

Q. Did you ever pay any dues to the Seedsmen's Union before you came to work?           A. No, sir.

Q. Did you ever pay any after working hours?

A. No, sir.

Q. In other words, all the dues you ever paid, you paid during working hours?           A. Yes, sir.

Mr. Watkins: That is all.



(Testimony of Alfred A. Freeman.)

Mr. Cobey: Did you ever pay any dues at the meetings?

The Witness: No, sir. [291]

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HAROLD FRAUENBERGER,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Harold Frauenberger, 1194 West 27th Street, Los Angeles.

Trial Examiner Paradise: Is that Harold?

The Witness: Yes, sir.

Trial Examiner Paradise: How do you spell your last name?

The Witness: F-r-a-u-e-n-b-e-r-g-e-r.

Mr. Cobey: May we have a slight recess at this point?

Trial Examiner Paradise: Yes. You may have a slight recess.

(A short recess.)

Trial Examiner Paradise: Proceed.

Q. (By Mr. Cobey) Mr. Frauenberger, you work down at Germain's, don't you?

A. Yes, sir. [292]

(Testimony of Harold Frauenberger.)

Q. How long have you worked there?

A. Since about the beginning of '27; approximately fourteen years.

Q. Can you, very briefly, give us a summary of your working experience down there? In other words—

A. You mean from the beginning?

Q. Yes.

A. I began as a shipping clerk's helper on the floor, and during the depression I was up working on the mills and in the bull gang, as the boys have called it, and worked a little while in the packing department—the package department, rather, on the fourth floor and going up to the retail store in rose bush season, when they have had rushes, and sold rose bushes, and then, of course, in about the last six years on the shipping floor.

Q. The last six years on the shipping floor?

A. About, approximately.

Q. Calling your attention to the period of August and September, 1937, what position did you have at that time?

A. City shipping clerk. That was under Mr. Hill.

Q. Can you tell us what you did at that time?

A. Checked the loads out and helped the boys load, attended to the air tubes and the complaint calls, and things of that sort.

Q. Did you act as dispatcher at all for the trucks? [293]

A. Well, on order of Mr. Hill.

Q. On order of Mr. Hill?

(Testimony of Harold Frauenberger.)

A. In other words, we had a group of orders every morning that were for the boys to handle,—

Q. I see.

A. —and it was on his orders.

Q. In other words, as I understand it, the trucks were routed by Mr. Hill; is that right?

A. No. There was no specific routes at all to follow. It was just as the work came in for the day, they had certain territories to cover, but the routes weren't exact—

Q. I see.

A. —on every trip, and a great many times the boys would route their own orders. In fact, that was the general practice.

Q. Would you relay Mr. Hill's orders to the truck drivers?

A. Generally speaking, yes. There was the orders for the day and there was an amount of work to be done, and everybody knew the amount of work that was to be done. In other words, they tried to load the trucks as soon as possible and get them out, so the boys would have plenty of time to finish their work in the daytime. It was work that everybody knew the general procedure.

Q. Now, how long did you work as city delivery clerk,—isn't it? [294]

A. Yes, the city shipping clerk.

Q. How long did you work at that?

A. About five or six years.

(Testimony of Harold Frauenberger.)

Q. About five or six years?

A. It is just recently that I have changed my position.

Q. What are you doing now?

A. The will call, receiving, shipping and the air tubes.

Q. As I understand it, you took Frank Miller's job when he had to go to the hospital?

A. Yes, that's right.

Q. Now, when Mr. Hill is sick, or for any other reason he is absent, who has charge of that shipping department?

A. No special one. There is a certain amount of work that has to be done and, well, it travels along just by itself, you might as well say, because most of the employees there have been there a great many years and they know their different positions without being coached every minute of the day or every day.

Q. Did you ever take charge when he was away?

A. I wouldn't say charge, because that wouldn't be the right—it is carrying on the regular procedure of my work.

Q. I see.

A. There never has been any occasion where anything has come up so that you could call it solving it yourself, or something like that. It has been the regular duties, the procedure that [295] has been carried on.

(Testimony of Harold Frauenberger.)

Q. When he is absent, is there anyone responsible for the truck drivers besides yourself?

A. By the word "responsible", what do you mean, Mr. Cobey?

Q. I mean, in other words, these truck drivers coming in and out, certain orders are being given to them, aren't there?

A. That is still the natural procedure of the day's work. In other words, there are pickups that come in from the different buyers, and the package department will need that, and if you have an empty truck, you don't run to Mr. Meyberg or Mr. Hill. You know that work has to be done. It is just automatic work that comes through.

Q. Now, the planning Mr. Meyberg does, as I understand, when he is absent, who does that?

A. Generally speaking, the drivers themselves have done it themselves. In other words, there may arise a question that a stop will be off a territory, and he lets,—the stop, rather, is given to another truck driver. And that is the morning's argument and getting ready for the day's work.

Q. Are those things referred to you?

A. Not necessarily. Sometimes they have been, but that has been just the natural procedure. The same question might arise between drivers. They may say, "You are going over to the southwest. How about taking this with you?"

Q. At one time you did discharge an employee, did you not? [296]



(Testimony of Harold Frauenberger.)

A. No, I haven't. I was laboring under a delusion, and I found that out definitely, because I had dropped out of the union, as you probably will ask me here eventually, and I wanted to be sure I was right, in the right standing before I would join up with the union again, and it was this, that Mr. Hill at one time took about a two months vacation or a month's vacation, anyway it was an extended period—

Q. Do you recall when that was? I don't mean to interrupt you.           A. No, I don't.

Q. You don't recall the year?

A. I wouldn't want to make a misstatement.

Q. Would you know whether it was in 1938, 1939 or 1940?

A. The payroll record would show.

Q. You have no recollection?

A. No, I haven't.

Q. Pardon me for the interruption. Go ahead.

A. (Continuing) And there was an employee there that knew he was an extra man, and knew the date that he was to be let out, and at that time I went to Mr. Meyberg and—or, rather, to Mr. Hill before he left, to give the date, and also the boy knew that date that he was to be let out, and before the date arrived I went to Mr. Meyberg, and he said, "Tell him to go to the cashier." It was just more or less relaying the messages I found that out definitely, because there was a [297] question in my mind.

(Testimony of Harold Frauenberger.)

Q. Do you remember who that individual was? Do you remember his name?

A. Harold—Carl I believe it was—Harold Carl.

Q. Harold Carl? A. Yes.

Q. Now, taking the period from 1937 on, what has been your salary?

A. Beginning at 100 and arriving at a point of \$115 at present.

Q. Between \$100 and \$115?

A. Yes. Every time they had a general increase, why, I received an increase. I believe it was a hundred at that time.

Q. Now, Mr. Frauenberger, I believe that you were on the formational committee of the Consolidated Seedsmen's Union, and one of the incorporators? Is that right? A. That's right?

Q. You were also president from the date of incorporation, that is, the date the papers were filed, until April 5, 1938?

A. That was the end of the first term, the official term.

Q. Yes. And you were also a director for the shipping department from the date of the incorporation to July 1st, 1938, which again ended the first term? A. Yes, ended the term, yes, sir. [298]

Q. Now, I think I am correct in this: There has been testimony to the effect that after Mr. Sage dropped out of this, you were the person that took over, and you were active in the movement?

(Testimony of Harold Frauenberger.)

A. I was active with the group that formed it. There was a group of seven, six or seven, I believe.

Q. Do you remember the Hill Street store meeting?      A. In the evening?

Q. Yes.      A. Yes, sir.

Q. You presided at that meeting, did you not? Or am I in error in that?

A. Now, which meeting was that? Was that the meeting at the time the officers of the union were introducing themselves to the Germain Seed and Plant Company, or was that the time that they held the vote on the four different subjects, the ballot?

Q. Well, you have got me baffled now. You tell me about those things.

A. I believe I just did. If you would like to question me on it, all right. I don't know much more than that. There were two meetings. Naturally, the Germain Seed and Plant Company didn't know who the representatives of the Consolidated Seedsmen's Union were, who the bargaining agents were.

Q. I am not referring to any conference you had with the [299] management. I am referring to the general meeting of the employees.

A. That was the time they had the voting on the four different subjects,——

Q. On the four different subjects?

A. ——or the number of subjects it was. I don't remember.

(Testimony of Harold Frauenberger.)

Q. Wasn't there an election in the warehouse also?

A. I don't remember it. I wouldn't want to say "No," or I wouldn't want to say "Yes."

Q. Now, Mr. Frauenberger, I show you Board's Exhibit No. 8. Have you seen that type of ballot before, or was that the ballot that was used in this election you are referring to?

A. Yes, I believe it was.

Q. Now, do you know, of your own knowledge, how this ballot was prepared?

A. You mean, in the taking of the ballot?

Q. Well, in other words, the first thing I would like to know is: Who drew up the form of the ballot? Do you know that?

A. No, sir, I don't.

Q. Do you know who attended to the printing of the ballots?

A. No, sir, I don't.

Q. When did you first learn of this election?

A. I believe it was word of mouth.

Q. It was word of mouth? [300]

A. That's my guess. That is a guess answer.

Q. You had nothing to do with the arrangement of the election?

A. No. I wasn't associated with the management, or of the meetings, the calling of the meetings of the different groups together at this time. I was just an onlooker.

Q. I believe you were chosen president of the union at a meeting of the board of directors in Mr.

(Testimony of Harold Frauenberger.)

Voorhees' office on September 20th. Is that correct?

A. Well, it was at Mr. Voorhees' office. Wait a minute now. That was just acting president until the organization meeting. That was just in order that we could carry on the business of our corporation papers, the record, begin our minutes for corporation papers. It was pre-organization——

Q. Pardon me for interrupting.

A. Certainly.

Q. I don't want to take too long about this, but, as a matter of fact, under the constitution and by-laws—under the by-laws—pardon me—the board of directors elected the president, didn't they?

A. That's right.

Q. And you were elected at that meeting and remained in office until April 1, 1938?

A. No. At our first meeting—when I say "first meeting", I mean the first Seedsmen's Consolidated Union—— [301]

Q. General membership meeting?

A. ——general membership meeting. Well, very first, the people that were organizing the union disbanded, and they had a general election at that meeting at that time.

Q. There is no record in the minutes of such a procedure. How do you account for that?

A. The Seedsmen's Consolidated Union, I believe, was not a union, so far as our own minds were concerned, until the first meeting at Herman's Hall.



(Testimony of Harold Frauenberger.)

Q. Do you recall when that first meeting occurred?

A. I believe the date is in the minutes, that is, where they approved the by-laws. The by-laws were read and approved. [302]

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BOARD EXHIBIT 16

Copy

**GENERAL MEETING OF MEMBERS OF  
CONSOLIDATED SEEDSMEN'S UNION, INC.**

The General meeting of the Members of the Consolidated Seedsmen's Union was called to order by the President, Harold Frauenberger, at 8:25 P. M. on November 9, 1937, at the Sons of Herman Hall, 120 E. 25th Street, Los Angeles, California.

Minutes of the Pre-Organization meeting held September 14, 1937, were read by the Secretary and approved.

The President stated that since the meeting of September 14th, the Consolidated Seedsmen's Union, Inc., had been incorporated, that a letter of recognition had been received from the Germain Seed & Plant Company which recognized this Union as the sole bargaining agent for all its employees at the Wholesale, the Hill St. Store, the Main St. Store, and the Van Nuys Store. The president also reported that many benefits to the members had al-

(Testimony of Harold Frauenberger.)

ready been agreed upon by the Germain Seed & Plant Co.

There was a general discussion in regard to enforcing the payment of dues by the members.

President Frauenberger asked for suggestions in regard to striking out the name of the Germain Seed & Plant Co. wherever it appears in the By-Laws of this Union. A general discussion followed.

It was moved by Jack Butterfield and seconded by Mary Martinez that there be a general meeting of the members of this Union held once each month. Motion carried.

It was moved by Ethel Durand and seconded by Mrs. Cook that these general meetings be held on the second Tuesday of each month. Motion carried.

It was moved by Theo Fielding and seconded by Evelyn Smead that the general meetings always be called at 8:00 P. M. Motion carried.

President Frauenberger called on each of the Divisions for discussion. Morris Stern, Director for Division #7 asked for suggestions. It was asked that an eight hour day be secured for all employees at the Van Nuys division.

R. Luck, Director of Division #2, called for discussion. The matter of seniority rights and standing was discussed.

D. G. Hatfield, Director of Division #3 not being present, the President called for discussion from that division. Pat Chavez asked that his position

(Testimony of Harold Frauenberger.)

and duties and rating be clarified. He was instructed to take this matter up with his Director at once.

Discussion from Division #4 brought forth the question of who the Billing Department works under.

Harold Frauenberger, Director of Division #1, asked for discussion, and members of the Traffic Department asked that their Director bargain for the drivers to have half hour lunch periods during the week and have Saturday afternoon off.

There was then considerable discussion as to how to secure a better attendance at the general meetings of the membership. President Frauenberger appointed a committee of Ethel Durand Mary Martinez to investigate and work out a plan and submit same at the next meeting.

Mary Martinez, as Department Representative, reported the question being raised at the Main St. Store in regard to being paid for overtime for having time off. The Director of Division #6 is to be approached to work this out with the management.

Tom Farley, Director of Division #5, asked for discussion, and Jack Butterfield asked that the promised made to him "that he would be taken care of in a little while" be followed up and some definite arrangement made. Tom Farley said he would take the matter up at once with the management.

After considerable general discussion of all these matters, it was moved by Ethel Durand and sec-

(Testimony of Harold Frauenberger.)

ended by Amos Kays that the meeting be adjourned.  
Motion carried and the meeting declared adjourned.

/s/ DOROTHY TURTON

Secretary

/s/ HAROLD FRAUENBERGER

President

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Q. (By Mr. Cobey) Now, Mr. Frauenberger, you have before you Board's Exhibit 3, and I also hand you for your inspection Board's Exhibit 11. Will you tell me what you know about those documents?

A. These were signatures of the charter members.

Q. You say "these." You mean Board's Exhibit 3? [303]

A. The pre-organization agreement.

Q. As I understand it, Board's Exhibit 3 was prepared from Board's Exhibit 11?

A. If the names check on both copies, it was.

Q. Yes. You may check them later.

A. I have, a little bit previous to this, at your suggestion.

Q. Did they seem to check?

A. Yes, sir.

Q. Do you know anything about the circulation of Board's Exhibit 11?

A. Just of the one that I had to circulate. I remember it was on my vacation time, and I spent

(Testimony of Harold Frauenberger.)

three days of my vacation, trying to contact the drivers.

Q. I see.

A. That was on my own time.

Q. On your own time?

A. In other words, I didn't get more time for it or pay for the days that I wasted, from the union or anyone.

Q. Where did you contact them?

A. Out in front.

Q. Out in front?                   A. Yes, sir.

Q. Do you know who else had copies of the various sub-sections of Board's Exhibit 11, in other words, various copies of this [304] pre-organization agreement and took them around to obtain signatures?

A. The pre-organization committee did, whoever they were at that time.

Q. In other words, the formational committee?

A. Yes, sir.

Q. I see.

A. Wherever they were working. It was one from the different divisions they finally made up.

Q. Is it your recollection that each of the members of the formational committee was given one of those pre-organization agreements and told to circulate it amongst the employees in his particular division?

A. Yes, sir. Not told to. It was the natural proceeding. After all, we had no money to pay for an



(Testimony of Harold Frauenberger.)

attorney or hire printing, or the other things that was necessary, and that was the normal start, the natural start, I should say.

Q. Do you know when that circularization took place? In other words, to refresh your recollection, your articles of incorporation, that is, of the Consolidated Seedsmen's Union, were executed on September 9th, they were filed on September 20th, at which time the first meeting of the incorporators took place. Was this circulated some time between those two dates, do you know?

A. You can find that out definitely by finding out when I [305] had my vacation. I know it was in the middle of my vacation.

Q. And you don't recall when you had your vacation?

A. No, I couldn't mention the date, because I wouldn't be sure.

Q. Do you think it was in that period I mentioned?

A. It was around the 1st of September, up in that period. [306]

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BOARD EXHIBIT 17-A

Minutes of Sept. 9, 1937

Minutes of the first meeting of the Pre-Organization Committee.

The Pre-Organization Committee met Thursday evening Sept. 9th, 1937, at the offices of J. P.

(Testimony of Harold Frauenberger.)

Voorhes, 5325 Crenshaw Blvd., Los Angeles, the Committee being comprised of Harold Frauenberger, Harry B. Orr, Morris Stearn, William S. Clark, Allan Hook, Dorothy Turton and Richard Luck.

After considerable discussion, and on the advice of Mr. Voorhes, it was decided that a Non-Profit Co-Operative Corporation should be formed by the employees of the Germain Seed & Plant Co. In order to incorporate, the organization must be named and the name chosen was "Seedsman's Consolidated Union." This name will entitle us to issue charters to employees of other seed firms.

Mr. Voorhes advised that his fee for drawing up the Articles of Incorporation, and advice in connection with forming an independent union would be \$50.00. The fee for filing Articles of Incorporation with the State of California would be \$11.00. If Mr. Voorhes were to assist in drawing up a contract between the employees and the management of the Germain Seed & Plant Co., and attend one or two meetings with the management, his fee would be \$25.00 additional.

It was pointed out that in forming a Non-Profit organization, there would be no Franchise Tax to pay to the State.

The Articles of Incorporation, and the Affidavit to the effect that the proposed union would be non-profit, were prepared by Mr. Voorhes and all seven

(Testimony of Harold Frauenberger.)

members of the Committee signed these papers and instructed Mr. Voorhes to file them in Sacramento.

The Committee then appointed Harold Frauenberger to be Chairman and Dorothy Turton to be Secretary-Treasurer until such time as the members of the Union elect their regular officers.

The following initiation fees were turned over to the Treasurer:

Harry B. Orr	\$8.00
Richard Luck	4.00
Morris Stearn	6.00
Harold Frauenberger	7.00
William S. Clark	10.00
Allan Hook	20.00
Dorothy Turton	3.00
	<hr/>
Total	58.00

The Treasurer was instructed to pay to Mr. J. P. Voorhes \$11.00 for the filing of the Articles of Incorporation at Sacramento, leaving a balance in the Treasury of \$47.00.

The Committee then decided to meet Friday evening at the residence of Dorothy Turton to draft By-Laws to be presented to the members to be voted upon.

There was a general discussion in regard to calling a meeting of all employees of the Germain Seed & Plant Co. the early part of next week, and

(Testimony of Harold Frauenberger.)

the Chairman, Harold Frauenberger, was instructed to secure a meeting place for said meeting.

/s/ DOROTHY TURTON

Read and approved Sept. 14, 1937.

/s/ DOROTHY TURTON

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BOARD EXHIBIT 17-B

MINUTES OF SEPTEMBER 10, 1937

Minutes of the second meeting of the Pre-Organization Committee.

The Pre-Organization Committee met Friday evening, Sept. 10, 1937, at the residence of Dorothy Turton. Those present were: Harold Frauenberger, Harry B. Orr, Morris Stearn, Allan Hook and Dorothy Turton.

As the purpose of this meeting was to draw up By-Laws to be presented to the members of the Seedsmen's Consolidated Union, the evening was devoted to this work.

Chairman Harold Frauenberger reported that he would probably secure a meeting place for the next general meeting Saturday and for the Committee to notify the employees of the next meeting for Tuesday night, meeting place to be announced later.

(Testimony of Harold Frauenberger.)

Secretary was instructed to prepare receipts to be issued to the members for their initiation fees, when paid.

/s/ DOROTHY TURTON

Secretary

Read and approved Sept. 14, 1937.

/s/ DOROTHY TURTON

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BOARD EXHIBIT 17-C

MINUTES OF SEPTEMBER 14, 1937

Meeting of the Employees of the Germain Seed & Plant Co. was called to order by the Pre-Organization Committee, Chairman, Harold Frauenberger, at 8:15 P. M., Sept. 14, 1937, in the Sons of Herman Hall, 25th and Main Sts., Los Angeles.

Chairman Frauenberger explained that the purpose of this meeting was to hear the reading of the proposed By-Laws drafted by the Committee, to act on these By-Laws, and to elect representatives to carry on the work of the organization.

Chairman Frauenberger asked for a vote of thanks to Otto Witt for his making it possible for us to secure the Sons of Herman Hall for this meeting. Unanimous.

The minutes of the Pre-Organization Committee meetings of Sept. 10th and Sept. 11th were read and approved.



(Testimony of Harold Frauenberger.)

Chairman Frauenberger announced that the Committee had chosen the name of "Seedsmen's Consolidated Union" for this organization when filing corporation papers, that it is to be a non-profit organization, and that we will have the power to issue charters to employees of like companies to carry on union business under our corporation.

Chairman Frauenberger then started reading the proposed By-Laws drafted by the Pre-Organization Committee and asked for discussion and suggestions.

It was moved by Frank Miller and seconded by Charles Converse that the membership of this union be left divided into the seven sections as stated in the proposed By-Laws. Motion carried.

It was moved by Thos. G. Harrison and seconded by Ethel Durand that the officers of this union hold office for one year. Motion carried.

It was moved by D. S. Westfall and seconded by R. Luck that the Financial Secretary and Treasurer be placed under a bond of \$500.00 each. Motion carried.

It was asked by Erick Regan if agricultural workers were entitled to membership in this union. It was pointed out that this Division is listed as the Van Nuys Store and not ranch.

It was moved by Allan Hook and seconded by Harry B. Orr that membership cards be issued which may be used for one year. Motion carried.

(Testimony of Harold Frauenberger.)

It was moved by D. S. Westfall and seconded by V. J. Nesbit that the dues shall be due on the 5th of each month and delinquent on the 15th of each month. Motion carried.

It was moved by James Colbry and seconded by W. A. Epperson that all voting of motions in the future be by raising the hand rather than by saying "aye" and "nay." Motion carried.

The matter of issuing buttons to the membership was discussed and suggested that the cost of purchasing same should be investigated. It was moved by Thos. G. Harrison and seconded by R. Kadous that the matter of deciding upon and securing buttons be left to the governing body to decide. Motion carried.

It was moved by Frank Miller that the Initiation Fee be \$1.00 for thirty days and then be raised to \$5.00. This motion was amended by Thos. G. Harrison that the Initiation Fee be increased in ten days instead of thirty days. The motion was seconded as amended by Thomas Farley. Motion carried.

It was moved by Richard Kadous and seconded by James Colbry that a quorum of fifteen members is necessary to hold a meeting and conduct the business of the union. Motion carried.

At the conclusion of the reading of the proposed By-Laws, they were approved as amended by the motions voted upon at this meeting.

Chairman Frauenberger called upon Allan Hook who at this time asked the membership to cooperate

(Testimony of Harold Frauenberger.)

and pull together so as to accomplish what this union has set out to do.

Chairman Frauenberger then asked all those who had not paid their Initiation Fee to step to the Secretary's desk and do so and receive their receipt, as only those holding a receipt would be entitled to vote at the elections to be held at this meeting.

The Pre-Organization Committee turned over to the Secretary the following initiation fees:

Allan Hook	\$2.00
K. Luck	1.00
Harold Frauenberger	1.00
Dorothy Turton	2.00
	<hr/>
Total	6.00

The members who paid their Initiation Fees to the Secretary were as follows:

Justin Scharff	\$1.00
Nida Crayton	1.00
Bob Kadous	1.00
Betty Anderson	1.00
Viola Gates	1.00
Charles C. Fitzgerald	1.00
Blanche L. Eaton	1.00
C. L. Van Doren	1.00
	<hr/>
Total	8.00

(Testimony of Harold Frauenberger.)

This made a total of \$14.00 turned into the Secretary for Initiation Fees, making the following Treasury Report:

Cash in hand	\$47.00
Initiation fees 9/14/37	14.00
	<hr/>
	61.00
Paid for hall rent	4.00
	<hr/>
Balance on hand	57.00

Chairman Frauenberger again called the meeting to order and asked if any one in the room was not a member to please retire.

Chairman Frauenberger then stated that the members would vote for one Assemblyman and one Department Representative from each section, each section to hold a separate election, and the party receiving the most votes to be elected Assemblyman and the party receiving the second highest number of votes to be elected Department Representative. Each member of the Pre-Organization Committee was then instructed to issue ballots in his own section and collect same for counting. The ballots cast were as follows:

Division # 1—Traffic: Harold Frauenberger 7, Stanley Watson 3, Eric Hulphers 2, Richard Kadous 2, Frank Miller 1, W. A. Epperson 1. Harold Frauenberger was elected Assemblyman and Stanley Watson was elected Department Representative.

(Testimony of Harold Frauenberger.)

Division #2—Third Floor: R. Luck 8, Florence Siemsen 5, Betty Anderson 2, Helen Martin 1, Alice Hook 1, Dorothy Davis 1. R. Luck was elected Assemblyman and Florence Siemsen was elected Department Representative.

Division #3—Fourth, Fifth and Sixth Floors: D. G. Hatfield 15, Allan Hook 9, V. J. Nesbit 8, Otto Witt 4, F. A. Wall, Jr. 1, Ed. Casey 1, Al Freeman 1, Roy Yoakum 1. D. G. Hatfield was elected Assemblyman and Allan Hook was elected Department Representative.

Division #4—Office: Blanche L. Eaton 6, Dorothy Turton 5, Viola Gates 4, Justin Scharff 2, C. L. Van Doren 1. Blanche L. Eaton was elected Assemblyman and Dorothy Turton was elected Department Representative.

Division #5—Hill St. Store: Thomas Farley 8, Thos. G. Harrison 6, Ethel Durard 3, E. J. Porter 3, Eugene Ganster 2, Eleanor Newmark 1, Charles Converse 1. Thomas Farley was elected Assemblyman and Thos. G. Harrison was elected Department Representative.

Division #6—Main St. Store: Harry Fenster 5, Mary Martinez 3, A. Coleman 2, Harry B. Orr 2, Minnie T. Sievers 1. Harry Fenster was elected Assemblyman and Mary Martinez was elected Department Representative.

Division #7—Van Nuys Store: Morris Stearn 5, Denver Hysell 4, Theodore Schroder 2, Erich Regan 1. Morris Stearn was elected Assemblyman and



(Testimony of Harold Frauenberger.)

Denver Hysell was elected Department Representative.

Chairman Frauenberger then declared that the Pre-Organization Committee was dissolved and that the Assembly was in force.

As there was no other business to come before the meeting, the meeting was adjourned and the Assemblymen and Department Representatives were asked to stay after the meeting.

/s/ DOROTHY TURTON

Secretary.

Read and approved Sept. 21, 1937.

/s/ DOROTHY TURTON

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#### BOARD EXHIBIT 17D

#### MINUTES OF ASSEMBLY OF SEPT. 14, 1937

The first meeting of the Assembly came to order at 11 P. M. Sept. 14, 1937, immediately following the adjournment of the general meeting of the Seedsmen's Consolidated Union. Assemblymen present were Harold Frauenberger, Richard Luck, D. G. Hatfield, Blanche L. Eaton, Thomas Farley, Harry Fenster and Morris Stearn. The Department Representatives present were Stanley Watson, Florence Siensen, Allan Hook, Dorothy Turton, Thos. G. Harrison, Mary Martinez and Denver Hysell.

(Testimony of Harold Frauenberger.)

The Department Representatives were instructed to collect the Initiation Fees of those not yet paid and to secure information and data as to the feeling among the members of his division, this information to be turned over to the assemblymen to be used as a working basis in drawing up the contract. The Department Representatives were then excused from the meeting.

The Assembly held an election for President of the Seedsmen's Consolidated Union and the following votes were cast: Harold Frauenberger 5, D. G. Hatfield 1, R. Luck 1. Harold Frauenberger was declared elected President.

It was moved by Harold Frauenberger and seconded by D. G. Hatfield that Dorothy Turton be unanimously elected Secretary-Treasurer of the Union. Motion carried.

It was moved by Harold Frauenberger and seconded by Blanche Eaton that Viola Gates be asked to take the office of Financial Secretary. Motion carried.

The motion was made and seconded that the bank account for the Seedsmen's Consolidated Union be carried in the Security First National Bank at 7th and Central. Motion carried.

The motion was made and seconded that the signatures of the President and Secretary shall be necessary on all warrants for the expenditure of any funds of the union. Motion carried.

(Testimony of Harold Frauenberger.)

It was agreed that the next meeting be held on Tuesday evening, Sept. 21, 1937, time and place to be named later by Harold Frauenberger.

As there was nothing more to come before this meeting, the meeting was adjourned.

/s/ DOROTHY TURTON

Secretary

Read and approved Sept. 21, 1937.

/s/ DOROTHY TURTON

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BOARD EXHIBIT 18-A

Consolidated Seedsmen's Union, Inc.

2415 12th Avenue

Los Angeles, California

September 28, 1937.

Germain Seed & Plant Company

747 Terminal Street

Los Angeles, California

Attention: Mr. Manfred Meyberg

President

Dear Sir:

The Board of Directors of the Consolidated Seedsmen's Union has instructed us to inform you that the Union now has as its members more than fifty-one per cent of your employees and as such is entitled to be recognized by you as the exclusive bargaining agent for all of your employees under the

(Testimony of Harold Frauenberger.)

provisions of the Wagner National Relations Act.

In order that you may be satisfied regarding the number of your employees who are members of our Union, our Secretary will be glad to show you the Pre-Organization Agreement which was signed by more than fifty-one per cent of your employees, and you may check these names against your payroll records if you desire. You may also see the Membership Application cards and check the signatures appearing thereon against your payroll.

We ask that you satisfy yourselves as quickly as possible and that you write us a letter stating that you are satisfied that we represent more than fifty-one per cent of your employees and that you do recognize the Board of Directors of the Consolidated Seedsmen's Union as the exclusive bargaining agent for all of your employees.

Very truly yours,

CONSOLIDATED SEEDSMEN'S  
UNION, INC.

.....  
President

.....  
Secretary

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 18-B

GERMAIN'S

Germain Seed and Plant Co.

Arcade Station P. O.

Los Angeles, U. S. A.

Established 1871

Oct. 1, 1937

Consolidated Seedsmen's Union Inc.

2415 12th Ave.

Los Angeles, Calif.

In Reply Refer to MM

Dear Sirs:

Replying to your letter of Sept. 28th beg to advise that we have checked your list of members and find that same constitutes more than 51% of our regular employees at our four units, known as the Wholesale Department at 747 Terminal St., Retail Store 562 Main St. Retail Store 635 S. Hill St. and the Van Nuys Store at 6133 Ethel Ave. and in accordance with your request desire to signify willingness of this Company to recognize your Board of Directors as the exclusive bargaining agent for these units.

Yours very truly,

GERMAIN SEED &

PLANT COMPANY

By MANFRED MEYBERG

MM:S

President



(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 18-C

Consolidated Seedsmen's Union Inc.

2415 12th Avenue

Los Angeles, Calif.

October 1, 1937

Notice to Members:

On October 1, 1937, and until further notice, Germain Seed & Plant Company has recognized the above mentioned Union and Corporation as the exclusive bargaining agent for their employees of the four units, the Wholesale, the Hill Street Store, the Main Street Store, and the Van Nuys Store.

The Consolidated Seedsmen's Union Directors wish to thank their members for the wholehearted co-operation they have given during the pre-organization period. This same cooperation is very necessary at all times for the continued success and welfare of your organization.

H. FRAUENBERGER

President

DOROTHY TURTON

Secretary

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Q. (By Mr. Cobey) Mr. Frauenberger, I show you two documents which have been marked as Board's Exhibits 12-A and 12-B. You have examined them before?

(Testimony of Harold Frauenberger.)

A. Yes, sir, I have. [311]

Q. Are you familiar with them?

A. To a certain extent. I have read them over recently.

Q. You will note that they evidently refer to certain negotiations. I wonder whether you could tell us what you recall of those negotiations?

A. When we received the letter of recognition, naturally, we had certain things that we wanted adjusted, including wages and hours and the surety of an understanding of vacation, and things of that sort, and that is what is listed on this larger sheet of paper here.

Q. Were those suggestions prepared by the board of directors?

Mr. Watkins: Wait a minute. Excuse me. You say "this larger sheet of paper." Does that have an exhibit number?

Mr. Cobey: Yes. I am sorry.

Mr. Watkins: What is it?

The Witness: 12-A.

Q. (By Mr. Cobey) Was Board's Exhibit 12-A prepared by the board of directors for the purpose of this conference?

A. In conjunction with the membership. Each director and representative canvassed his certain division for suggestions on the wants of the different employees and members—I will say "employees" rather, because there were a certain few that weren't

(Testimony of Harold Frauenberger.)

members, and that was the sum and total of their findings. [312]

Q. (By Mr. Cobey) Mr. Frauenberger, I hand you four documents, which have been marked as Board's Exhibits 19-A, 19-B, 19-C and 19-D, for identification. You have examined these documents before, have you not? A. Yes, sir.

Q. Now, it would appear from Board's Exhibit 19-A, for identification, that this conference, to which you have just been referring, between the Board of Directors and the management of the company, occurred on October 5, 1937.

A. Yes, sir.

Q. And it would appear from Board's Exhibit 19-C, for identification, that following the conference the membership was polled as to whether or not they would agree to the results of the conference. Is that correct? A. Yes, sir.

Q. And the poll in all cases was favorable, with the exception of the office, and as to the office further negotiation [313] occurred. Is that correct?

A. Yes, sir, that is correct.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-B

Consolidated Seedsmen's Union, Inc.

2415 12th Avenue

Los Angeles, Calif.

October 14, 1937

Germain Seed & Plant Company

747 Terminal Street

Los Angeles, California

Attention: Mr. Manfred Meyberg

Dear Sir:

The Board of Directors wish to advise that the following vote was cast by the members of the Consolidated Seedsmen's Union to give the Directors of the Union the right to proceed with making definite agreements with the Germain Seed & Plant Company as per the suggestions already presented to your firm.

Yes	54 votes
-----	----------

No	26 votes
----	----------

A great many of these suggestions have not yet been worked out. Their speedy consideration and adjustment will be for the benefit of both the Union and the Germain Seed & Plant Company.

Yours truly

.....  
President  
.....

Secretary

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-C

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

Minutes of Meeting of  
Board of Directors  
(Meeting of October 13, 1937)

Page 2

Lines 10-30

Harold Frauenberger appointed the following committees to count the ballots cast by the members on October 12th and 13th on the acceptance or rejection of the hours and wages proposed by the Management of Germain Seed & Plant Company, and the suggestions proposed to and accepted by the management: A. Vanderveer, R. Kadous, and E. Hulphers to count the Third Floor, Office, and Van Nuys; Margaret Weihe, Clara Seastedt, and Myrtle Butterfield to count the Traffic Dept., 4th, 5th, and 6th Floors, and Main St. Store; Margaret Weihe, Clara Seastedt and Helen Linnell to count the Hill St. Store.

The Secretary read the reports of the committees, which were as follows:



(Testimony of Harold Frauenberger.)

Traffic Dept.	Yes 6	No 2
Third Floor	Yes 15	No ...
4th, 5th, & 6th Floors	Yes 12	No 7
Office	Yes 5	No 10
Hill St. Store	Yes 7	No 3
Main St. Store	Yes 4	No 2
Van Nuys Store	Yes 5	No 2
	-----	-----
Total	Yes 54	No 26

After considerable discussion, it was decided that Harold Frauenberger and D. G. Hatfield with Blanche Eaton approach Mr. Meyberg at once in the interests of the office, and also to ascertain definitely the effective date of the new scale of wages and hours; also to come to a better understanding as to when the grievances or suggestions that have already been stated shall be worked out.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 19-D

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

Minutes of Meeting of  
Board of Directors

(Meeting of November 2, 1937)

Page 1

Lines 14-17

The committee of Harold Frauenberger and D. G. Hatfield, together with Blanche L. Eaton, appointed to see Mr. Meyberg about effecting a more favorable agreement between the office employees and the management, reported some success.

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Q. (By Mr. Cobey) Now, Mr. Frauenberger, calling your attention again to Board's Exhibit 12-A, you will notice on there certain pencil notations. Now, as to those numbered paragraphs that are marked "O. K.," does it mean that at this [314] bargaining conference on or about October 5, 1937, an agreement was reached between the directors and the management as to those portions?

A. That's right, yes, sir; subject to the penciling underlining the notation, of course, to each item, that is correct.

(Testimony of Harold Frauenberger.)

Q. Now, was this conference held with the board of directors as a whole, or was the conference held with the director of each division?      A. Both.

Q. How was it done?

A. The main general subjects were talked about and brought forth, and debates, a small debate on the different subjects was offered on both sides. Then it broke up into committees, and the great thing seemed to be, as I remember it, seemed to be speed in getting more money for the boys. They wanted more money—our members, rather—and the union decided they could work faster and get more results by breaking the conference into committees after the main meeting of us was held.

Q. Now, at this main meeting, the full membership of the board of directors was there, from the Consolidated Seedsmen's Union, as you recall?

A. Yes, sir.

Q. And who represented the management?

A. Mr. Meyberg. [315]

Q. Mr. Meyberg was the sole representative of the management?      A. Yes, sir.

Q. As I understand your testimony, he first conferred with you as a whole on the subjects that affected you as a whole, on the suggestions that you put forward?

A. There were other members that attended from the firm. Mr. Meyberg, of course, represented the firm.

(Testimony of Harold Frauenberger.)

Q. Who were the other members from the firm?

A. Mr. Marks and Mr. Schoenfeld. I believe that was all.

Q. Mr. Schoenfeld was the vice president?

A. And sales manager.

Q. And was at that time?

A. And was at that time.

Q. And what was Mr. Marks at that time?

A. He was manager of the retail store.

Q. That is of the Hill Street store?

A. The Hill Street store and Main Street store both was under his supervision.

Q. Then following the general conference, it was broken up by divisions and you had conferences?

A. Yes, sir. They felt that each division, each director and representative knew the definite ones of their members and could complete the business in a shorter period of time. [316]

Q. (By Mr. Cobey) How was this conference arranged?

A. Through the secretary of the union. Through --I don't remember whether she made the arrangements over the phone or through letter, but it was made.

Q. And she notified the various members of the board of directors as to the appointment?

A. Yes, that's right. I believe she typed out a printed slip and gave them to us.

Q. And that was distributed to the members of the board of directors?      A. Yes, that's right.

(Testimony of Harold Frauenberger.)

Q. Do you know how it was distributed? Do you recall how you received it?

The Witness: No, I don't remember how it was distributed. It is too long ago.

Q. (By Mr. Cobey) Now, Mr. Frauenberger, I call your attention [317] to Board's Exhibit 12-B. You have examined that?

A. Yes, sir, I have.

Q. Does that represent an accurate summary of what was agreed to with respect to Division 3?

A. I don't see anything in here about seniority rights. That was granted to the whole organization, and that is item 6.

Mr. Watkins: Item 6 on Exhibit 12-A?

Mr. Cobey: Yes. Pardon me.

The Witness: Yes. That is not on 12-B. As I remember it, this was just a general rough summary of the conference.

Mr. Watkins: You are speaking of "this." What are you speaking of?

The Witness: 12-B was a rough summary of what was obtained for Division 3. It wasn't an accurate summary, but I believe some of the new members raised the question of just what was given Division 3, and we roughly made it out.

Q. (By Mr. Cobey) As I understand it, this (indicating) was a notice that was posted?

A. I believe this copy here (indicating) was taken from this one here (indicating).



(Testimony of Harold Frauenberger.)

Trial Examiner Paradise: Referring to Board's Exhibit 12-B being taken from the penciled paper attached to it?

The Witness: Yes. This was just a rough copy. It [318] wasn't taken exactly from this one here. It was just a rough copy for an answer to their inquiry of what was granted.

Q. (By Mr. Cobey) Now, calling your attention again to Board's Exhibit 12-A, and the paragraph numbered 2, in regard to overtime, can you tell me whether or not, to your knowledge, that overtime at the rate of time and a half has been paid since that time?

A. To my knowledge, yes, sir.

Q. What about paragraph 4, numbered 4 on Board's Exhibit 12-A, in regard to vacations? Before you answer the question: Just to refresh your recollection, weren't there further negotiations in regard to vacations in May, 1938?

A. I believe there was. It was right before vacation time.

Now, what was your first question, Mr. Cobey,—about the holidays, you were asking about?

Q. No. I was going to ask about vacations, but it appears that because of further negotiations the vacation matter had not been settled definitely, at least, prior to May, 1938. Is that your recollection?

A. Yes. The action was at this time, but we wanted to try to get a two weeks period for the members that had been working over five years.

(Testimony of Harold Frauenberger.)

Q. I see. Now, what had been the vacation practice of the company prior to that time?

A. After employment of one year you were eligible for one [319] week, but with the change and bargaining rights of the union, naturally, if that wasn't stated, that wouldn't be a fact that all members would receive that.

Q. I see.

A. And the same thing is true with item 5.

Q. That is the——

A. (Continuing) We felt if it was not brought out, it would not be a fact, it would not be so.

Q. Item 5 of Board's Exhibit 12-A referred to holidays?      A. Yes.

Q. Now, you have already referred to paragraph numbered 6 on Board's Exhibit 12-A. That is the seniority rights, and as I understand that from your previous testimony, since that time promotional and lay-off seniority has been observed, to the best of your knowledge?      A. That's right, yes, sir.

Q. Had it been observed prior to that time?

A. Generally. Generally so, because——

Q. Was your reason—pardon me for interrupting you. You may complete your answer.

A. (Continuing) ——there has been several occasions where the union has made adjustments through this right that we have gained.

Q. I see. Now, in regard to item No. 1 on Board's Exhibit 12-A, the one relating to overtime—item 2,

(Testimony of Harold Frauenberger.)

rather—has [320] time and a half been paid for overtime prior to that time?

A. To those that could get it, in other words.

Q. Was it the general practice?

A. If the need for overtime was strong enough, and the certain ones held out, they would receive it. Otherwise, it would be, oh, supper money, something of that sort.

Q. But since that time, to your knowledge, time and a half has been paid for overtime; is that correct?

A. Yes, sir, when it has been brought up, as far as I know, it has.

Trial Examiner Paradise: Will you read that answer?

(The answer was read by the reporter.)

Trial Examiner Paradise: I don't understand your answer. You say "when it has been brought up." What does that mean?

The Witness: It has, yes. Overtime has been granted, has been paid.

Trial Examiner Paradise: Has been paid, as a matter of course?

The Witness: Yes, sir. That has been automatic.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Now, I call your attention to paragraph No. 8 on Board's Exhibit 12-A, in regard to the scale of wages, and I notice a notation, a penciled notation, "Discussed individually." What does the pencil notation mean?

(Testimony of Harold Frauenberger.)

A. Well, that pencil notation is for the instance of the [321] office. I wouldn't want to be sure, but it was some special instance that arose.

Q. I see. Do you happen to know did it mean that wages were to be discussed with the individual members, or what?      A. By whom?

Q. By the management.      A. Oh no.

Q. No?      A. No, sir.

Q. It would mean that the directors——

A. Those are business with the directors, with the members of the directors and the firm. It was not between the employee and the firm.

Q. It was between the directors, in other words?

A. Between the directors.

Q. In other words, the individual discussion was between the representatives of the management and the directors of the union? Is that right?

A. That's right, yes, sir.

Q. Now, Mr. Frauenberger, again calling your attention to Board's Exhibit 12-A, and to the paragraphs numbered 10, 11 and 12, which have a penciled notation after them, "To be worked out by the firm and the union," and also the penciled notation, "O.K." Does that mean the management agreed to them as a matter of general principle and left the details to be [322] worked out in further negotiations?

A. They were items that took a period of time to work out. In other words, they couldn't be put

(Testimony of Harold Frauenberger.)

into effect on a moment's notice, but they were granted.

Q. And they were later worked out?

A. Yes, sir. In other words, you will notice this one, "The delivery trucks shall have meters to record overtime and the day's work." They did not know where to buy the meters. We had to find that out, and then installing them, that took a period of time. That is what I mean when I say a period of time to be worked out.

Q. They were subsequently installed?

A. Oh, positively, yes, sir.

Q. The meters on the trucks, that is paragraph numbered 10?      A. Yes, sir.

Q. Now, again referring to Board's Exhibit 12-A, for identification, paragraph No. 14 in regard to the closing of the shipping floor doors during lunch hour. That practice has been followed since then?

A. They have closed the delivery doors, and they leave the others open. The traffic manager signs for the merchandise when he is there.

Q. That is during the lunch period?

A. Yes. The delivery doors are closed on one side of the building. There are two that are open, and the boys sit in [323] the doorway to eat their lunch, and it is an accommodation that they like, and the other doors are closed.

Trial Examiner Paradise: Does that practice



(Testimony of Harold Frauenberger.)

differ from the practice that prevailed before these suggestions were made?

The Witness: Yes. They used to leave the two doors that are closed, they used to leave them open.

Trial Examiner Paradise: What was the significance of the change?

The Witness: Well, there was merchandise coming in and customers coming in, and, oh, it was an attempt to do business during the lunch hour.

Q. (By Mr. Cobey) In other words, this was an attempt to give the employees an uninterrupted lunch hour? Is that right?

A. Yes, that's right.

Q. Now, am I to understand, Mr. Frauenberger, again speaking of Board's Exhibit 12-A, that in regard to the paragraphs numbered 15, 16 and 17, and 19 and 18 as well, that those practices were put into effect at that time?

A. Yes, sir. They were being worked out.

Q. And they represented a change from the practice prior to that time?           A. Yes, sir.

Q. In all cases [324]           A. Yes, sir.

Q. None of them were an embodiment of the existing practice?

A. Or they would be an embodiment of an existing practice and an improvement to them. In other words—

Q. But none of them were just a statement of the existing practice?

A. Oh, no. They were an improvement.

No. 10,082

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United States

Circuit Court of Appeals

For the Ninth Circuit. <sup>2</sup>

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,  
a corporation,

Respondent.

Transcript of Record

In Two Volumes

VOLUME II

Pages 477 to 686

Upon Petition for Enforcement of an Order  
of the National Labor Relations Board

FILED

MAY 20 1942

PAUL F. O'BRIEN,  
CLERK



No. 10,082

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United States

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Upon Petition for Enforcement of an Order  
of the National Labor Relations Board





ALLAN HOOK,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: 9000 McNerney Avenue, South Gate. [325]

Trial Examiner Paradise: And your name is Allan Hook?

The Witness: **Allan Hook.**

Q. (By Mr. Cobey) Can you speak up, Mr. Hook?      A. Yes, I will.

Q. Mr. Hook, you are employed down at Germain's?      A. Yes, sir.

Q. How long have you been employed there?

A. Approximately 18 years.

Q. Will you tell us what you have done since you have been down there?

A. Well, the first day I worked there I unloaded a car.

Trial Examiner Paradise: We don't need all that. State what you have been doing for the last five or six years.

The Witness: Two years I made fertilizer.

Q. (By Mr. Cobey) Is that in the last half dozen years?

A. That is the first two years.

(Testimony of Allan Hook.)

Q. The first two years. I will accept the Trial Examiner's limitation. Just tell us about the last six years.

A. Well, since that time I have been operating the mills.

Q. Since the first two years you have been operating the mills?      A. Yes, sir.

Q. I see. Now, as I understand it, the mills are on the sixth floor of the warehouse. Is that correct?

A. Yes, sir. [326]

Q. Calling your attention to the period of August and September of 1937, will you tell us what you were doing at that time?

A. Well, I have always been running the mills.

Q. You have always been running the mills?

A. Always.

Q. Have you had anything to do with the bull gang?      A. Yes.

Q. Will you tell us what you had to do with the bull gang?

A. Well, as seed comes in, I got to have the seed where it can be handed to the mills, and I go to Mr. Gates, the foreman, and he says to me, "Have it put wherever you want it," and I put it in a likely spot where it can be got at for the mills.

Q. In other words, you tell the bull gang where to put it?

A. Yes. I don't order them. I just ask them to do it.

(Testimony of Allan Hook.)

Q. Do you ever ask them to do anything else besides that?

A. Well, I ask them to help me on the mills sometimes. I ask permission of Mr. Gates if I can have a man to help me.

Q. When Mr. Gates isn't there, who takes charge of the bull gang?

A. Well, whoever wants to have them. They don't take charge. Sometimes they come to me and ask if I have a job to give them, something to do.

Q. And you assign them whatever work you have to do? [327]

A. Yes.

Q. I see. Was it a part of your job at that time to make recommendations as to hiring and firing?

A. No, sir.

Q. You have never done that?

A. No, sir.

Q. Are you ever asked by your superiors as to what your opinion of a certain man's work is?

A. No, sir.

Q. You don't recall ever having been asked that?

A. No, sir. He just does his own mind making up on who's who.

Q. And he doesn't depend on you at all?

A. No, sir.

Trial Examiner Paradise: Who is your superior?

The Witness: Mr. Gates.

Q. (By Mr. Cobey) So in the 18 years you have been there, you don't recall of Mr. Gates com-

(Testimony of Allan Hook.)

ing to you and asking you about the work of any particular man?

Mr. Watkins: Mr. Cobey, I can hardly hear you and I am only about four feet away.

Mr. Cobey: I am sorry.

The Witness: No, I don't think he has ever asked me. He just uses his own judgment. If he finds a good man, he generally takes him away.

[328]

Q. (By Mr. Cobey) Mr. Hook, will you tell us what wages you have been receiving since August, 1937?

A. I was raised—let me see now—it was during the depression I was getting between 70 and 75 dollars a month. Then we had a raise. I can't exactly recall this——

Trial Examiner Paradise: Well, let's take it from the other end. What are you receiving at the present time?

The Witness: I am getting \$115 a month at the present time.

Trial Examiner Paradise: And did you get a raise in the fall of 1940?

The Witness: Yes. I think I was getting \$100.

Q. (By Mr. Cobey) You were getting \$100 in the fall of 1940?

A. Yes, sir. I believe that is correct.

Q. Now, were you raised from \$75 to \$100 at one jump? A. I don't recollect.

Q. Now, do you recall what you were making

(Testimony of Allan Hook.)

in August and September of 1937? It was somewhere between \$75 and \$100 a month, wasn't it?

A. Yes, it was between that amount.

Q. Now, Mr. Hook, you were on the pre-organization committee of the Consolidated Seedsmen's Union, were you not? A. Yes, sir.

Q. You also were an incorporator and you were a director just for one day, the day of the incorporation, were you not? [329] A. Yes, sir.

Q. Then you were a director again, you were elected director again for Division 3 last July, was it not? Or was it later than that?

A. Last July—I believe we didn't have an election until October.

Q. Until October of last year?

A. I think you will find it there in the minutes of October. It was kind of late.

Q. They forgot about the election?

A. Yes. It was brought up on the floor about the election.

Q. Then you were elected president on April 1st of this year; is that right? A. Yes, sir.

[330]

Q. (By Mr. Cobey) Do you happen to know whether or not the Consolidated Seedsmen's Union is now negotiating for a closed shop contract with the company? A. Not yet. Not at present, no.

Q. Not at present? A. No.

Q. There were plans to that effect under consideration, were there not? A. Yes, sir.



(Testimony of Allan Hook.)

Q. (By Mr. Cobey) Now, calling your attention to the period of August and September, 1937, do you recall certain meetings [331] held in the warehouse of the employees?

A. I only recall one meeting in the warehouse.

Q. Will you tell us what you recall about that meeting?

A. Well, I know that practically all the men employees were there. I don't recollect any women being there. I recollect Mr. Hill and Mr. Sage and Mr. Gates present, and Mr. Hill and Mr. Gates were kindly asked to step outside.

Q. By whom?

A. Well, I couldn't exactly say by whom. It seemed by everybody agreeing they should do it, by the assembly. The discussion of the meeting was independent unions.

Q. Was there a speaker there?

A. Well, I couldn't exactly say who the speaker was. I believe Mr. Voorhees was, and a man from Cudahy's.

Q. Now, Mr. Hook, do you recall an election being held at the plant during that same period, that is, in the warehouse?

A. Well, we had—yes, we had an election after the meeting in the Hill Street store.

Q. When did that meeting occur?

A. In the Hill Street store?

Q. Yes.

(Testimony of Allan Hook.)

A. Well, it was the following week or so.

Q. Do you recall what happened there?

A. Well, the discussing of the independent unions, and they decided to have an election on it to decide what they wanted—[332] the members—the employees of the Germain's.

Q. Was the election held then and there?

A. I don't believe. I can't recollect exactly where it was.

Q. Do you recall whether or not you attended any meetings of the so-called department heads——

A. No.

Q. ——during this period?

A. No, I never attended the department heads meetings.

Q. You never attended any meetings of that sort?

A. I don't recollect. Not to my recollection.

Q. You have no recollection on it?      A. No.

Q. (By Trial Examiner Paradise) Are you a department head, Mr. Hook?      A. No, sir.

Q. Are there any other people who worked in the mills besides yourself?

A. No, not regularly employed.

Q. What are these mills, by the way?

A. They are all cleaning mills, to clean the seeds.

Q. How many are there?

A. We have about 12 or 14 machines.

Q. And you say you are the only one who is regularly employed there?      A. Yes, sir. [333]

(Testimony of Allan Hook.)

Q. During the season do you employ more men?

A. Yes. We employ as high as 12 men.

Q. And who runs the milling department when you have 12 people up there?

A. Mr. Gates is always in charge, whether there is one man or 12 men.

Q. Do you give any orders to the other people?

A. Only from Mr. Gates, transfer his orders to the men.

Q. Was Mr. Gates always present on the milling floor?      A. No, sir.

Q. Where does he work?

A. He has an office on the fifth floor.

Q. And are you always present on the milling floor?      A. Yes, sir.

Q. What sort of orders do you give to the other people on the milling floor, that you say you relay from Mr. Gates?      A. Verbal orders.

Q. What sort of orders?

A. Well, he gives me a sheet with the record of the seed, whether it is quarantine or non-quarantine seed, and I have to take this seed and clean it, get the noxious weeds or non-noxious weeds, whichever he wants out, and, I have to get this piled down and get it to them, get it to the mills. If I have no help, I have to do it myself. Sometimes it is heavy and sometimes it might run from two sacks to a thousand sacks, [334] and, naturally, I have to have help and I have to ask him for some help, and when I do that, he will tell me to get such and such a man

(Testimony of Allan Hook.)

working on five to help me. Naturally, he tells me which man it is, and sometimes I have to have them help me on the mills, but I regulate the speed and how fast they put it in, and all that.

Q. And do you tell Mr. Gates when you need additional men to work on your floor?

A. Yes, sir.

Q. You tell him you want to put a couple more men on the mills?

A. No, sir. I don't tell him to put a couple more men on. He generally uses his own judgment, whether I need any more men. Sometimes I have to ask him. Sometimes the seed runs so fast and the machines are running so I have either to shut them down or ask for more help.

Q. I see. And when the work starts to fall off, do you make any recommendation to Mr. Gates about letting some people go?      A. No, sir.

Q. You don't do that at all?      A. No, sir.

Q. Do you make any reports to Mr. Gates regarding the quality of the work done on the mill floor?

A. No, sir. Sometimes—I attempted to complain about one [335] man one time. The man is present in the room. He didn't do exactly what I asked him to do, so he said he didn't have to do what I told him to do.

I said, "That's all right. Just go down to see Mr. Gates and he will tell you what to do." I said, "I have no further authority over you."

(Testimony of Allan Hook.)

Q. Who is responsible for the discipline on the mill floor?      A. Mr. Gates.

Q. Suppose something occurs while Mr. Gates is down on the fifth floor. Does anybody have the duty of reporting it to Mr. Gates?

A. In what way?

Q. Suppose an employee is guilty of misconduct on the milling floor.

A. I just generally—

Q. Who is charged with the duty of seeing he is disciplined?

A. Well, sometimes a man will make a mistake and destroy a lot of seed. Well, naturally, I am responsible for that seed. If it was run wrong, I am responsible. I am responsible to Mr. Gates. It is up to me to see that none of the men working under me or with me can do any damage like that, because it means a lot of money to the company to have any seed destroyed, because you can destroy a lot of seed by mixing one with the other, on account of you can't separate those seeds. It is impossible to separate them in any shape, way or form. So it [336] is up to me to guide the men in their capacities and ask them to do certain things. If they don't do as I ask them, I ask them to go down to see Mr. Gates and give them some other work to do.

Q. Mr. Gates' title is what? Foreman?

A. I believe it is, according to the men's way of knowing, it is foreman.



(Testimony of Allan Hook.)

Q. And is there a sub-foreman in that division—

A. No, sir.

Q. —of the work? A. No, sir.

Trial Examiner Paradise: All right, counsel. Excuse the interruption.

Q. (By Mr. Cobey) Mr. Hook, I show you Board's Exhibit 8. You have testified as to an election. Do you know whether or not Board's Exhibit 8 is the type of ballot that was used in that election?

Mr. Watkins: Mr. Examiner, I object to the question as being argumentative. There hasn't been any dispute on that.

Mr. Cobey: It is merely preliminary.

Trial Examiner Paradise: All right. Answer it.

The Witness: Yes, I believe I have seen that kind of a ballot.

Q. (By Mr. Cobey) Now, Mr. Hook, can you tell me who prepared those ballots? [337]

A. No, sir, I couldn't.

Mr. Watkins: Did you ever ask Mr. Voorhees whether or not he did, Mr. Cobey?

Q. (By Mr. Cobey) Have you any idea?

A. No sir. I wasn't in any way connected with that at all.

Q. You were on the formational committee, weren't you, of the Consolidated Seedsmen's Union, —the preorganization committee?

A. Yes. We only had—I was at one meeting on that.

(Testimony of Allan Hook.)

Q. How was that committee selected?

A. I have no recollection how it was selected.

Q. You don't have any idea how you got on that committee?      A. Not exactly.

Q. What is the best of your recollection on the thing?

A. Well, I think it was picked kind of according to the ability of the man.

Q. Who picked them?

A. I couldn't say.

Q. So at the present time you have no recollection, no definite recollection?      A. No.

Q. Of how you got on the committee or how the committee was picked?

A. No. It is kind of vague. [338]

Q. Now, Mr. Hook, I show you Board's Exhibit 12-B. It is my understanding that that was the notice that was posted there for the membership in your division. I notice your name on it as department representative.      A. Yes, sir.

Q. Now, I call your attention on Board's Exhibit 12-B to item No. 6:

"A better allotment and statement concerning subforemen and their positions."

By "subforemen," to whom are you referring?

A. A sub-foreman is kind of a straw boss.

Q. Do you know the individuals you had in mind?

A. Well, myself—I tried to get myself—what

(Testimony of Allan Hook.)

was my title, whether I should be a sub-foreman or not, and my title was never as such.

Q. I see. What other individuals were included in that reference?

A. I think it was Mr. Nesbit and Mr. Hatfield. I don't believe there was——

Q. How about Mr. Luck?

A. I don't know about Mr. Luck. He was—he had a department of his own. He has a one-man department. We was never sub-foremen. We was never admitted to being foremen at all.

Q. Mr. Hook, I call your attention to the six items on Board's Exhibit 12B, for identification. Will you inspect [339] them and then will you tell me which of them represents changes from the working practices existing prior to that time?

Mr. Watkins: Mr. Examiner, I object to that as being cumulative testimony and not being relevant to the issues in this proceeding, in any event.

Mr. Cobey: It is highly relevant.

Trial Examiner Paradise: Overruled.

The Witness: Well, we got the hours changed, I believe.

Trial Examiner Paradise: Let's start with No. 1: Six holidays during the year.

The Witness: Well, we always had those.

Trial Examiner Paradise: Now, take No. 2.

The Witness: We had those.

Trial Examiner Paradise: You had No. 2?

The Witness: One week vacation with pay. Well,

(Testimony of Allan Hook.)

we did have it stopped one time, during the depression.

Q. (By Mr. Cobey) Had you got it in 1936 and 1937, do you recall? A. Yes, I believe we had.

Trial Examiner Paradise: All right, take No. 3 now on Board's Exhibit 12-B.

The Witness: I always asked for time and a half for myself, and I always got it, so long as I worked at Germain's. I was speaking of myself.

Q. (By Mr. Cobey) What about No. 4? [340]

A. I believe we used to work as high—when I first started to work, we worked as high as eight and a half hours a day six days a week.

Q. Do you recall whether or not the change in hours was made at that time or a year later, in 1938, when the Wage & Hour Law came into effect?

A. I don't recollect.

Q. Now, as to item No. 5. A. I think—

Q. This is on Board's Exhibit 12-B.

A. I don't have a clear recollection of the dates of the pay raises.

Q. Can you amplify the statement there on item No. 6 on Board's Exhibit 12-B? I think you have already given some testimony in that regard.

A. Yes. As I said before, we had a mistaken idea what our capacities was, whether it should be classed as sub-foreman and get more money than that. I think that was the general idea, was to get our money above the ordinary man, our pay, you see, for being a little more responsible for the type

(Testimony of Allan Hook.)

of work we was doing, and that is the only way we really asked to get the more money, for giving us a title.

Q. A new classification?

A. Yes. But I don't think—I didn't get that.

Q. Now, you recall Board's Exhibit 12-B quite clearly, don't [341] you? Did you write that up yourself?

A. No, sir.

Q. Or did Mr. Hatfield write it up?

A. No, it is not my writing.

Q. Do you happen to know who wrote it up?

A. No, sir. I don't recognize the writing.

Q. But you do remember such a document being posted?

A. Yes, sir.

Q. On that date or on or about that date, December 22, 1937?

A. Somewhere around that time, I believe.

Q. Now, Mr. Hook, I call your attention to Board's Exhibit 12-A. I am going to ask you certain questions in regard to that. Now, these items 6 and 7 as to promotional, layoff or seasonal seniority, what had been the practice of the company in the past in regard to seniority?

A. Well, we never had—you mean before we had any agreement whatever with the company?

Q. Yes, before October 5, 1937.

A. Well, as far as the department I worked in, why, they just hired a bunch of men, and if a man was extremely willing, or otherwise, why, they tried to keep him on. If there wasn't enough work for them to do, why, they laid them all off, you see.



(Testimony of Allan Hook.)

Q. They didn't follow seniority?

A. Not exactly, no. They just kept the best men.

[342]

Q. Do they follow it more closely since that time?

A. Since we had an agreement with the company, they tried to follow it. I think they did follow it too, as far as——

Q. Mr. Hook, would you examine the remainder of Board's Exhibit 12-A? I think most of it relates to other departments besides your own, but you just check it over. That is from——

A. From 7?

Q. From item—— A. 8?

Q. ——from 8 on.

A. You see, I know nothing about all this business at all.

Q. You know nothing about those other items?

A. No, sir.

Q. They are outside of your department?

A. Yes, sir, way outside.

Mr. Cobey: Will you mark this, for identification, please?

(The document referred to was marked as Board's Exhibit 20, for identification.)

Q. (By Mr. Cobey) Mr. Hook, I show you a piece of paper which has been marked, for identification, as Board's Exhibit 20. Now, in that respect I ask you whether or not you did not submit a petition in the form of Board's Exhibit 20, for

(Testimony of Allan Hook.)

identification, to the board of directors of the Consolidated [343] Seedsmen's Union in February of 1938? This will probably refresh your recollection.

(Handing document to witness.)

A. You say this was not presented—

Q. Would you read my question, please?

(The question was read by the reporter.)

Mr. Watkins: Do you understand the question, Mr. Hook?

The Witness: I know I got this petition up. This is my handwriting.

Mr. Watkins: Do you understand the question?

The Witness: I don't exactly get it. Whether did I present this to the board of directors?

Trial Examiner Paradise: That is the question, yes.

The Witness: That is the question. I think—I don't know whether I gave it to the Board of Directors. I don't think I was—was I a director at that time?

Mr. Cobey: No, you were not.

Trial Examiner Paradise: Well, at any rate, the witness said he prepared the petition.

The Witness: I prepared the petition and passed it around, and if I was a representative at that time, I gave it to the director and the director would bring it up at the meeting.

Trial Examiner Paradise: Whether you presented it or not, it was presented to the Board of Directors? Is that [344] right?

(Testimony of Allan Hook.)

The Witness: Yes, sir.

Trial Examiner Paradise: In February, 1938?

The Witness: Yes, sir.

Trial Examiner Paradise: All right.

Q. (By Mr. Cobey) Do you know what action was taken on that petition, that is, Board's Exhibit 20, for identification?

Mr. Watkins: Don't the minutes reflect that?

Q. (By Mr. Cobey) Do you have any recollection on that?

Mr. Watkins: I object to the question as calling for not the best evidence and calling for hearsay. The minutes will reflect the action.

Trial Examiner Paradise: Is that not so, Mr. Cobey?

Mr. Cobey: Yes. The minutes do reflect inaction on this petition.

Trial Examiner Paradise: Isn't that the best evidence then?

Q. (By Mr. Cobey) Were you ever advised as to the action taken on that petition?

A. I don't—

Q. You don't understand the question?

A. Yes, I think it was put over until the next meeting. I don't think there was enough members to decide on that, other members of the union.

Mr. Cobey: I offer Board's Exhibit 20, for identification, [345] in evidence.

Mr. Watkins: No objection.

(Testimony of Allan Hook.)

Trial Examiner Paradise: It is received.

(The document heretofore marked as Board's Exhibit 20, was received in evidence.)

Q. (By Mr. Cobey) Mr. Hook, calling your attention to the month of September, 1940, can you tell us whether or not at that time you prepared a petition for wage increases?

A. Yes, I believe I did.

Q. Can you tell us the circumstances under which you prepared it?

A. Well, the circumstances was rather funny at the time. I think there was a truck driver come upstairs and he wanted me to go before—with him and another man——

Q. Was that Robert Montgomery?

A. Yes, I believe that is his name; a truck driver. And I told him at the time I couldn't do anything unless it was through the union, and I didn't want—

Q. That is the Consolidated Seedsmen's Union?

A. Yes, sir.

Trial Examiner Paradise: Excuse me for interrupting. What was it Montgomery wanted you to do?

The Witness: He wanted me to go before the firm and ask for the raise. I told him the proper manner was to get up a petition, under the sanction of the union, the Consolidated [346] Seedsmen's Union, to present to the company in the proper, legal manner, and I didn't want anything to do with that way of doing business.

(Testimony of Allan Hook.)

So I think he went down and got Mr. Eric Hulphers, and in that way they got all of the men to go in to see Mr. Meyberg.

Q. (By Mr. Cobey) Do you know whether he got anybody else besides Mr. Hulphers?

Mr. Watkins: Just a minute. I object to that as being hearsay, and also as having been testified to by the parties involved in the transaction.

Trial Examiner Paradise: Overruled.

The Witness: I don't think there was any—

Q. (By Mr. Cobey) Specifically, do you know whether he got Mr. Charles Loy?

A. I don't know whether he was involved or not; I mean, in the conference, in getting the men together, but we all went to Mr. Meyberg's office.

Q. That was after quitting time that same day?

A. I couldn't exactly state.

Q. Do you know about when you drew up this petition? In other words, was it that same day that Montgomery came up to you that you prepared this petition? A. I am not sure on that point.

Q. Well, do you know how many days later it was? [347]

A. Oh, it was in the immediate vicinity of that time.

Q. Either the same day or a few days after that? A. Yes sir.

Q. Can you state the substance of that petition?

A. Well, the idea was that everybody wanted a raise, and it come from the management that



(Testimony of Allan Hook.)

somebody get something specific up, so as to present to them, and I made kind of a summary, that summary there, and each man decided what each one wanted. I think it was for \$110 a month, and I put down for myself \$125 a month.

Q. Now, as I understand it, then, you say that the management had asked that something specific be put before them?

A. I think that was the general idea.

Q. Was that the meeting that was held after quitting time in Mr. Meyberg's office?

A. I don't know whether which meeting was held, but that's how that petition got to be made.

Q. I see. Then you drew it up, and did you circularize it?

A. I circularized it around the departments 5 and 6. They asked me to do it, this certain person. I couldn't swear who it was, but they delegated me to pass it around.

Q. You don't know who it was that delegated you?

A. No, sir.

Q. Did it go beyond departments 5 and 6?

A. Well, it was just they wanted my departments, so that they [348] could get a fair understanding of what each person wanted.

Q. Do you happen to know whether or not that petition was ever presented to the management?

A. I don't know whether it was presented. I turned it in to—I think I turned it to Mr. Hatfield.

(Testimony of Allan Hook.)

I don't know whether it was presented to the company.

Q. To whom did you turn it over?

A. To Mr. Hatfield, I think. I am not sure. I turned it to the director at that time.

Q. To the director of your division—

A. Yes.

Q. —of the Consolidated Seedsmen's Union?

A. Yes. You see, they had several—I think somebody resigned and somebody was appointed. In that way I get the names mixed up.

Mr. Cobey: I see.

Mr. Watkins: Mr. Cobey, may I ask a question at this time that will probably save having to go back over this in order to refresh his recollection?

Mr. Cobey: Yes.

Mr. Watkins: I will ask you whether or not this petition you are referring to was circulated on company time?

The Witness: Yes, I believe it was.

Mr. Watkins: That is all. Thank you.

Q. (By Mr. Cobey) Now, Mr. Hook, referring to Board's Exhibit [349] 20, was that also circulated on company time? As a matter of fact, I don't think you have testified you circulated it. I think you testified you drew it up. Did you circulate that one in February, 1938, Board's Exhibit 20? Did you circulate that as well?

A. I don't recollect it.

Q. You don't recall?

(Testimony of Allan Hook.)

A. No, I don't recall.

Q. Now, calling your attention again to this second petition—

A. Yes.

Q. —the one in September of 1940. You say that you put yourself down at that time for \$125, as you recall?

A. I think I had it \$120 or \$125.

Q. Do you recall any discussion among the fellows, that is, the employees with you, as to why you put yourself down for \$125?

A. Well, they all seemed—they wanted me to put that down, all the other employees, except some—

Q. Did you make any statement in that regard?

A. (Continuing) —except some employees in other departments, they didn't like that, because they thought maybe I wasn't—

Q. Well did you make any statement with respect to your position and responsibilities at that time, in explaining why you put yourself down for \$125? [350]

A. Well, I had bigger responsibility. My position is a bigger responsibility, and I really thought at that time it demanded more money than the average man.

Q. I see. Do you recall whether or not you suggested that you be listed on that petition as a subforeman?

A. Well, the men seemed to think I should be

(Testimony of Allan Hook.)

listed as a sub-foreman. It was the general opinion of the men.

Q. I see. Now, Mr. Hook, did you always keep your dues up in the Consolidated Seedsman's Union?"

A. I did kind of get lax in them at one time.

Q. That was during 1938, was it not? Do you recall?

Mr. Watkins: I object to that, Mr. Examiner. It has no bearing on the issues involved in this case.

Mr. Cobey: It is merely preliminary, Mr. Examiner.

Trial Examiner Paradise: I will take it subject to a motion to strike.

The Witness: Do I have to answer?

Trial Examiner Paradise: Yes. Read the question, please, Miss Reporter.

(The question was read by the reporter.)

The Witness: I believe it was some time during that period.

Mr. Cobey: Will you mark this, please?

(The document referred to was marked as Board's Exhibit 21, for identification.) [351]

Q. (By Mr. Cobey) Mr. Hook, I show you a document marked Board's Exhibit 21, for identification. Would you examine that and state whether or not you ever received the copy of such a letter as Board's Exhibit 21, for identification?

(Testimony of Allan Hook.)

(Handing document to witness.)

A. Yes, I think I recollect something to that effect.

Q. It is your recollection that you did receive some letter like that?

A. Yes, I think I did, something like that.

Q. From the Consolidated Seedsmen's Union?

A. Yes, sir.

Mr. Cobey: I ask that Board's Exhibit 21, for identification, be admitted in evidence.

Trial Examiner Paradise: Any objection?

Mr. Watkins: No, we have no objection.

Trial Examiner Paradise: It is received.

(The document heretofore marked as Board's Exhibit 21, was received in evidence.)

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## BOARD EXHIBIT 21

Consolidated Seedsmen Union Inc.

Los Angeles, Calif.

May 23, 1939

Dear Mr.

During the last few months the Consolidated Seedsmen Union Inc. has made sincere efforts to unite its members and increase its efficiency. In striving for this goal the members of the Union who are in good standing have come to the conclusion that the members who are not in good standing are a hinderance and in some cases a detriment.



(Testimony of Allan Hook.)

Consequently they think that the members in poor standing are not entitled to any benefits gained or achieved by the Union.

Therefore action has been taken to change the laws of the Union in the following manner: Any member who is two (2) months in arrears with his dues will be given notice that in the event All of the dues are paid up at the third month; the member will be forced to drop his affiliation with The Consolidated Seedsmen Union. Which will mean among other things that his name will appear on the list which goes to Mr. Meyberg each month as Non-Union Members and the list from which any future lay-offs are to be chosen.

This hereby constitutes your notice; and we ask you to realize the seriousness of this.

Sincerely,

CONSOLIATED SEEDSMEN UNION

R. KADOUS,

Pres.

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Q. (By Mr. Cobey) Now, Mr. Hook, at the time the delinquency in your dues was called to your attention, do you remember whether or not you took up the matter of your remaining a member of the Consolidated Seedsmen's Union with anybody?

Mr. Watkins: I submit, Mr. Examiner, that hasn't any bearing on the issues involved in this case, and we object to it on that ground. It seems

(Testimony of Allan Hook.)

to me there should be enough [352] material things so that we should not have to clutter the record with matters of this kind.

Mr. Cobey: It is preliminary, Mr. Examiner.

Trial Examiner Paradise: I will take it subject to a motion to strike. Answer the question.

The Witness: That is—

Mr. Cobey: Pardon me?

The Witness: I didn't get that.

Mr. Cobey: Would you read the question?

The Witness: I don't get that meaning. Is it objection sustained, or—he says it different.

Trial Examiner Paradise: You will have to answer the question.

The Witness: I have to answer it?

Trial Examiner Paradise: Yes.

The Witness: The reason I didn't pay my dues, —I think it was because I wasn't getting a receipt.

Q. (By Mr. Cobey) Pardon me for interrupting you. I didn't ask you for the reason why you didn't pay them. I asked you: At the time the failure to pay your dues was called to your attention by this letter, along about this time, didn't you take the matter up with another individual? Didn't you have a discussion on that point?

A. No, I don't believe I had a discussion.

Q. Specifically, I am asking you: Do you or do you not [353] recall going down and talking to Mr. Meyberg about it?

A. Yes, I talked to Mr. Meyberg.

(Testimony of Allan Hook.)

Q. About when was that?

A. When I received that letter, after I received that letter I asked him——

Q. That letter is dated May 23, 1939. So it was some time around then?      A. Yes.

Q. And the letter referred to is Board's Exhibit 21. Now, was anybody else present besides yourself and Mr. Meyberg?      A. No, sir.

Q. Will you tell us what was said?

A. I asked—I went to Mr. Meyberg and asked him if he had a closed shop agreement with the union. He said, "No."

I asked him if I would get laid off if I didn't pay my dues or belong to the union. He said, "No."

I asked him if it would be—I told him the reason I didn't pay my dues was because I wasn't getting a receipt for the money that was being paid into the union, and I believed the union should give a receipt to our group, and it wasn't sustained on the floor, and I really—I objected to paying dues if they didn't give a receipt. That was my objection to paying dues.

I didn't really drop from the union. I was still a member of the union. [354]

Trial Examiner Paradise: All right. Now, tell us what Mr. Meyberg said, please.

The Witness: Well, he said, "To keep harmony in the firm, it is better to join the union, the fifty cents a month doesn't break you. It is immaterial, the amount you pay to the union." He said, "To

(Testimony of Allan Hook.)

keep harmony in the firm, it is best to join, to keep paying your dues.”

Q. (By Mr. Cobey) Do you recall whether he said anything about the desirability of a man in your position remaining in the union?

A. No, sir.

Q. You don't recall that?

A. No, sir. He didn't say that. I don't believe he said that.

Q. You don't believe he said that?

A. No, sir. [355]

Q. (By Mr. Cobey) Perhaps this next inquiry is subject to the same objection. I wish to ask, Mr. Hook, as to whether or not you have collected any dues for the Consolidated Seedsmen's Union?

A. Yes, I have collected dues as representative.

Q. You collected them during 1940, or a part of 1940? Is that right?      A. 1940? [356]

Q. You collected them on the job?

A. Well, any time I could get the men to fork over the fifty cents.

Q. Whether that was during or after working hours?

A. Well, sometimes you would ask them and they would have their money in their clothes, and you would go up where they kept the clothes and they would give it to you.

Q. Did you ask the men on the job?

A. Yes, on the job.

(Testimony of Allan Hook.)

Q. Did you ever engage in any solicitation of membership for the Consolidated Seedmen's Union?      A. I don't believe so. [357]

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DANIEL G. HATFIELD,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Daniel G. Hatfield, 1225 South Mariposa Avenue.

Q. (By Mr. Cobey) Mr. Hatfield, you work down at Germain's, don't you?      A. Yes, sir.

Q. How long have you worked there?

A. About 22 years.

Q. Will you tell us what you were doing down at Germain's in August and September of 1937?

[360]

A. Filling orders.

Q. You were filling orders on what floor?

A. Fifth and sixth.

Q. Fifth and sixth floors. Were any people working up there with you at that time?

A. Well, yes and no. I have a man when I have a need for him. Otherwise, I do it myself.

Q. And you have only this one helper?



(Testimony of Daniel G. Hatfield.)

A. Yes, sir.

Q. And there isn't anybody up on the—what is it—fifth and sixth floors?

A. Fifth and sixth floors.

Q. —except you and your helper, whenever you need him? A. That is all.

Q. Has that condition existed, I mean, right along since September, 1937? A. Oh, yes.

Q. I mean, there has been no change?

A. No change whatever.

Q. Now, what were your wages at that time, that is, in September, 1937? A. \$90.

Q. \$90 a month. How much are you getting at the present time? A. \$115. [361]

Q. \$115. You were raised from \$100 to \$115 last fall? A. Yes, sir.

Q. Now, coming back again to September of 1937, or August of 1937, can you tell us whether or not you did any talking to the employees about the A. F. of L.? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Did you join the A. F. of L. at that time?

A. No, sir.

Q. You did not. Do you happen to recall whether or not you ever had any arguments with Mr. Sage on the A. F. of L. and independent union?

A. Yes, sir.

Q. About that time do you recall having any arguments with Mr. Sidebottom? A. No, sir.

Q. You didn't argue with Mr. Sidebottom?

(Testimony of Daniel G. Hatfield.)

A. No, sir.

Q. But you do recall having some arguments with Mr. Sage?      A. Yes, sir.

Q. Where were the arguments held?

A. In the building.

Q. Up on the fifth or sixth floors?

A. Yes, sir. [362]

Q. Now, I think you were a director of division 3, weren't you, for the Consolidated Seedsmen's Union from September, 1937, to July, 1938?

A. Yes, sir.

Q. Now, you were in the court room when Mr. Hook testified, weren't you, Mr. Hatfield?

A. Yes, sir.

Q. I show you Board's Exhibit 12-B, and after you have examined that and have thought of Mr. Hook's testimony in that respect, would you tell us whether or not your testimony would be any different in regard to those items?

Mr. Cobey: Is that agreeable to you? That is just to save time.

Mr. Watkins: Fine.

The Witness: Yes, sir.

Q. (By Mr. Cobey) Your testimony would be the same as that of Mr. Hook as to Board's Exhibit 12-B?      A. Yes, sir.

Q. Is that your handwriting?

Trial Examiner Paradise: Referring to what, counsel?

(Testimony of Daniel G. Hatfield.)

Mr. Cobey: Pardon me. Board's Exhibit 12-B?

The Witness: Here (indicating)?

Q. (By Mr. Cobey) Yes. A. No, sir.

Q. You don't know who wrote that? [363]

A. No, sir.

Q. But you remember that notice being posted, referring again to Board's Exhibit 12-B?

A. Yes, sir.

Q. Now, Mr. Hatfield, did you sign that petition for a wage increase last fall that Mr. Hook got up?

A. No, sir.

Q. You did not? A. No, sir.

Q. Did you sign either one of the petitions?

A. No, sir. Last fall, you mean?

Q. Yes. You didn't sign either one of those petitions? A. No, sir.

Q. Now, do you ever have any more than one helper up on the fifth and sixth floors?

A. At times, whenever I got more than the two of us can handle, then I always can get help.

Q. What are your duties up there?

A. Filling orders.

Q. You just fill seed orders?

A. Anything that comes in my stock.

Q. Anything that comes in your stock?

A. Yes. I have two floors and fill orders on both floors.

Q. Who relays the orders up to you?

(Testimony of Daniel G. Hatfield.)

A. They come up by air tube, written orders. [364]

Q. By air tube. And you just go around and fill the orders? A. Fill the orders.

Q. And you occasionally have one helper?

A. Yes, sir.

Q. And then, if business demands, you have more, is that right? A. Yes, sir.

Q. Now, do you go down and tell Mr. Gates that you want more helpers?

A. Yes, sir, whenever possible.

Q. Whenever possible?

A. If I get a hurry up order, and he isn't around, I just grab anybody that is there.

Q. You grab anybody that is there and tell him to help you out? A. Yes, sir.

Q. That would generally be one of the fellows from the bull gang? A. Yes, sir.

Q. Now, this helper that you have, is he or not pretty regularly employed? A. Yes, sir.

Q. He is on there pretty permanently. How much does he get, do you know, at the present time? A. \$100, I think. [365]

Q. (By Mr. Cobey) Mr. Hatfield, do you recall whether or not at any time you have reported to Mr. Gates upon the quality of work that is done either by your helper or by the members of the bull gang— A. No, sir.

Q. —in filling orders for you?

A. No, sir, never did.

(Testimony of Daniel G. Hatfield.)

Q. You never have?           A. No, sir.

Q. So far as you recall, you have never complained or made any other type of comment upon any employee's work?           A. No, sir.

Q. The only thing is that when you have to have that extra help, you tell them what to do and see that they do it properly; is that right?

A. Yes, sir. [366]

Q. You are responsible for the proper filling of the order for seeds—           A. Yes, sir.

Q. —on the fifth and sixth floors?

A. Yes.

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VIVIAN J. NESBIT,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: Will you state your name and address, please?

The Witness: Vivian J. Nesbit. [367]

Trial Examiner Paradise: What is it?

The Witness: Vivian J. Nesbit.

Trial Examiner Paradise: How do you spell your first name?

The Witness: V-i-v-i-a-n; not Miss. 817 West 103rd Street.

Q. (By Mr. Cobey) You work down at Germain's?           A. Yes, sir.



(Testimony of Vivian J. Nesbit.)

Q. How long have you worked there?

A. About seventeen years.

Q. What were you doing down there in August and September of 1937?

A. Filling orders; working on the fourth floor.

Q. Working on the fourth floor?

Mr. Watkins: Speak up just a little louder, will you, Mr. Nesbit?

The Witness: Yes, sir.

Q. (By Mr. Cobey) As I understand it, you have worked on the fourth floor since then?

A. Yes, sir.

Q. How many persons work on the fourth floor? That is, what is the number of employees that you have on that floor, on the fourth floor?

A. Five at present.

Q. Five employees. Has that number remained fairly constant [368] during the last four years?

A. No, it is seasonable.

Q. It is seasonable?

A. On the way the orders come in, why, the—

Q. How low does it drop?

A. Well, it has dropped to two of us on the floor.

Q. How high has it gone?

A. Five is the—

Q. This is all within the limitations of the last four years? A. That's right.

Q. So that it has varied from two to five?

A. Well, within—I wouldn't say four years,

(Testimony of Vivian J. Nesbit.)

because in the last four years we have had more than that.

Q. I see. What is the lowest you have had in the last four years?      A. Three or four.

Q. Three or four. So I would gather from that that it has stayed fairly constant, around four? I mean, the average has been around four, is that right?      A. The average, yes.

Q. In the last four years. Now, what were you making in August, 1937?      A. \$90.

Q. What are you getting now?      A. \$115.  
[369]

Q. You were raised from \$100 last fall?

A. From \$105.

Q. From \$105. Now, who is your superior?

A. Mr. Hill.

Q. Has he been your superior during the last four years, that is, your immediate superior?

A. No; between he and Mr. Gates.

Q. It has varied?      A. It has varied.

Q. I see. Now, is the fourth floor a separate department?

A. Well, no, it is in conjunction with the shipping department now.

Q. It is in conjunction with the shipping department?      A. Yes.

Q. Well, now, neither Mr. Hill nor Mr. Gates are stationed on the fourth floor, are they?

A. No, sir.

Q. Where are they stationed?

(Testimony of Vivian J. Nesbit.)

A. Mr. Gates has an office on the fifth floor.

Q. He has an office on the fifth floor. Pardon me.

A. And Mr. Hill has an office on the shipping floor.

Q. Who assigns the work to the men on the fourth floor?

A. Well, there is really no one that assigns the work. That is, the daily orders, they come in and the men that works there, know what it is, and they have to go out then and tell them to [370] make deliveries and what work is to be done.

Q. You are the most experienced man on the floor, aren't you?

A. The oldest man, yes, sir.

Q. The oldest man on the floor. Have you ever been in charge of that floor?      A. Never.

Q. You have never been in charge of it?

A. No, sir.

Q. Do you recall an interview that you had with Mr. Gould, an examiner from the Labor Board?

A. Yes, sir.

Q. Accompanied by Mr. Watkins?

A. Yes, sir.

Q. Do you recall whether or not you told him that you thought that at one time for about six months you had been in charge of that floor?

A. Well, that was—I recall that—that was during the time it was switched from Mr. Hill to Mr. Gates, and then from Mr. Gates to Mr. Hill again, but my idea of being in charge is being in charge,

(Testimony of Vivian J. Nesbit.)

you know, so as to hire and fire, of which I have never been in charge.

Q. Have you ever recommended any hiring or firing.

A. I never have. I never recommended a man.

Q. Have you ever made any comments upon the work performed [371] by the men working with you to Mr. Gates or Mr. Hill?

A. No. Only when I have been asked, when they come to me and ask me if—which man has been there longer, then I can tell them, because I know, but, of course, that record is in the office, they can find out.

Q. In connection with lay-offs, do they ever come to you and ask you about which man should be laid off?      A. No, sir.

Q. They don't?

A. Only like I said, if one man has seniority.

Q. Nobody has ever asked you as to the quality of the work done by the other men up there on the fourth floor?      A. No, sir.

Q. Now, when Mr. Hill or Mr. Gates are away or sick, who is responsible for the operation of the fourth floor?

A. Well, there is no one that is responsible, as far as that goes. There is no business—all the men are there and they know what to do.

Q. Now, if anything out of line occurs up on the fourth floor, whose duty is it to report it?

(Testimony of Vivian J. Nesbit.)

A. Well, of course, if I am called down to the office, and I have a waiting order there, I will ask the man to fill this order until I come back. Yes, I do that.

Q. But, as I understand it, neither Mr. Hill nor Mr. Gates are stationed on that floor, are they? [372]

A. That is right.

Q. You were director of the Consolidated Seedsmen's Union for Division 3 from January, 1938—I mean, July, 1938 to July, 1939? Is that right?

A. I was, yes, sir.

Q. I call your attention to Board's Exhibit 12-B. Do you [373] happen to know—I will just ask you for your own knowledge—if you happen to know who are referred to there as sub-foremen?

A. No, I don't.

Q. You don't know?           A. No, sir.

Q. Now, you were in the court room when Mr. Hook testified, were you not?           A. Yes, sir.

Q. I want you to examine Board's Exhibit 12-B, and I will ask you just generally: Would your testimony in that regard be the same as Mr. Hook's, that is, with the exception of sub-foremen, just in regard to the working practices?

A. Yes, that would. [374]



STANLEY WATSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Stanley Watson, 1926 Estrella.

Q. (By Mr. Cobey) Avenue?

A. Avenue.

Q. L. A.?           A. Yes.

Q. Mr. Watson, you work down at Germain's?

A. Yes, sir.

Q. How long have you worked there?

A. Approximately seven years.

Q. You have been a truck driver the whole time?           A. No.

Q. I am sorry. What have you done?

A. For about a year and a half I worked on the sixth floor in the bull gang.

Q. And since then you have been a truck driver?

[375]

A. Yes, sir.

Q. Now, I think you were president of the Consolidated Seedsmen's Union from February 6, 1940 to September 23, 1940?

A. Well, I don't recall the dates. If that is what is in the book, why, it's right.

(Testimony of Stanley Watson.)

Mr. Cobey: Will you mark this, for identification, please?

(Thereupon the document referred to was marked as Board's Exhibit 22, for identification.)

Q. (By Mr. Cobey) I show you, Mr. Watson, Board's Exhibit 22, for identification. Is that an accurate statement of the meeting at which your resignation was asked and received? Is that a correct statement?

(Handing document to witness.)

A. It is.

Mr. Cobey: I ask that Board's Exhibit 22, for identification, be admitted in evidence.

Mr. Watkins: May I see it just a minute, please?

The Witness: The last part, about that matter, I didn't know about that, Mr. Cobey. The proceedings of that was right, except for the last where it said to meet with Mr. Meyberg. That happened after I left the office.

Q. (By Mr. Cobey) Where was the special meeting that was referred to held?

Trial Examiner Paradise: Just a minute. Any objection [376] to the receipt of Board's Exhibit 22?

Mr. Watkins: No, your Honor.

Trial Examiner Paradise: All right. It is received.

(Thereupon the document heretofore marked for identification as Board's Exhibit 22, was received in evidence.)

(Testimony of Stanley Watson.)

BOARD EXHIBIT 22

Copied from minute book of Consolidated Seedsman's Union. Proofread by Gladys Van Sickle, April 17, 1941.

SPECIAL MEETING  
BOARD OF DIRECTOR'S

A special meeting of the Directors of the Consolidated Seedsmens Union was called at 10:50 A. M., Monday, September 23rd, 1940.

Stanley Watson was asked to resign because of the A. F. of L. affiliations. He refused to do so and stated that he had planned to do so after October 15th, 1940. After refusing to resign he was then voted out of the office of President by a unanimous vote. It was pointed out to Mr. Watson by Mr. Hook that according to law he couldn't be affiliated with one Union and hold office in another.

Fern Wingrove then nominated Jack Butterfield for president and the nomination was seconded by Miss Sievers and carried by a five to one majority.

Mr. Butterfield was called in and accepted the office with the understanding that he would receive the cooperation of the Union members.

The meeting then adjourned to meet immediately with Mr. Meyberg.

/s/ RUTH SLEE,

Acting Secretary.

/s/ JACK BUTTERFIELD,

President.

(Testimony of Stanley Watson.)

Q. (By Mr. Cobey) Where was that special meeting of the board of directors referred to in Board's Exhibit 22 held?

A. In the library at Germain Seed.

Q. That is in the warehouse?

A. It is on the second floor, in the office.

Trial Examiner Paradise: Is that the first meeting that had ever been held there?

The Witness: To my knowledge.

Trial Examiner Paradise: I beg your pardon?

The Witness: To my knowledge.

Trial Examiner Paradise: Where did they usually hold board of directors' meetings?

The Witness: Well, board of directors' meetings were usually, if they went out for some meeting at dinner or at someone's home. [377]

#### Cross Examination

Q. (By Mr. Watkins) You testified to a meeting in the library of the company on the second floor, that is, a meeting of the board of directors of the Consolidated Seedsmen's Union. Did you get any permission from anyone connected with the management to hold the meeting there?

A. Not that I know of. [382]

HAROLD FRAUENBERGER

Direct Examination (Continued)

Q. (By Mr. Cobey) Mr. Frauenberger, just to make sure that the record is clear on this point, I think that you have already identified certain exhibits, namely, Board's Exhibits 18-A, B and C, testifying to the fact that the union requested recognition and was accorded recognition some time around October 1, 1937. A. Yes.

Q. Now, I understand that you were a member of the original committee, the pre-organization committee? A. That's right.

Q. Can you tell us how that committee was picked?

A. I wouldn't want to make a statement under oath how it was picked.

Q. I see. A. It is——

Trial Examiner Paradise: Do you know how you were selected for that committee? [386]

The Witness: Well, I don't know whether it was the ultimate conclusion of union organization; in other words, debate about organizing our independent union, or whether there was some other method used. I know I was very active at that time in organizing an independent group. [387]



(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 23-A

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF

BOARD OF DIRECTORS

(Meeting of February 1, 1938)

Page 2

Line 16-31

Allan Hook said that so many wanted to know what the funds of the Union were being spent for, and suggested that a summary Treasurer's Report be given at each General Meeting. Also, Allan Hook presented the following petition from Division 3, which petition was held over for further discussion at the next meeting.

“We, the undersigned, agree to the following:

“100.00 per month as a minimum wage for common labor;

Time and a half for overtime;

Five and a half days of 44 hours per week;

Paid for legal holidays;

Vacations—1 year's service to five years—1 week; 5 years and over—2 weeks (paid);

(Testimony of Harold Frauenberger.)

Seniority shall rule;

Closed shop;

(Signed)

F. A. Wall, Jr.

Don L. Cramsey

Roy O. Yoakum

Edward Casey

Paul D. Spence

F. A. Wall

Otto Witt

James Neal

A. Hook

V. J. Nesbit

A. Vanderveer

D. G. Hatfield

Pat Chavez

Alfred A. Freeman”

Stanley Watson explained that the drivers were not being allowed for overtime. He was instructed to present his overtime in writing to Mr. Hill so that the matter could be followed up.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 23-D

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING

OF

BOARD OF DIRECTORS

(Meeting of March 1, 1938)

Page 2

Line 9-20

The following petition from the Third Floor, Division 2, was read.

“We the undersigned, employees of the Germain Seed and Plant Co., feel that we should have more money than the seasonal workers. Most of the steady girls have been here for a number of years and are acquainted with the work, and bear the burden of responsibility, and we feel as though we should have at least \$5.00 per month more than the seasonal workers. This suggestion has been agreed upon by the undersigned, and we request it be taken before the management.

Dorothy Davis

Verna Newman

Nyda Hansen

Florence Siemsen

Betty Anderson

(Testimony of Harold Frauenberger.)

Corrine Harger

C. Dempsey

Ann Miller

Ida New

Alice Hook

After a great deal of discussion, it was decided that at this time it is not advisable to approach the firm with the request made in this petition.

The petition presented at the meeting of February 1st by Allan Hook from Division 3 was again read. Like the petition from Division 2, it was decided not to act on this petition at this time.

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BOARD EXHIBIT 23-E

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF

BOARD OF DIRECTORS

(Meeting of January 18, 1938)

Page 2

Lines 16-25

Tom Farley reported that the Hill St. and Main St. Store members felt that they should be entitled to have two half days off per month. It was de-

(Testimony of Harold Frauenberger.)

cided that Tom Farley and Harry Fenster should circulate a petition among the members at the two stores, said petition to be prepared by the Secretary, and to request two half days off per month for Union members in good standing only. After securing signatures to this petition, the Board will then discuss the matter of presenting it to the Management of the Firm.

Motion was made by R. Luck and seconded by D. G. Hatfield that a list of grievances be made, and that said grievances be discussed and approved by the Board and then presented by a Committee to Mr. Meyberg. Motion carried.

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Q. (By Mr. Cobey) Mr. Frauenberger, I hand you Board's Exhibit 24-A through 24-F, for identification. You have examined this exhibit recently, at my request? A. Yes, sir.

Q. Now, as I understand it, Board's Exhibit 24, for identi- [389] fication, consists of certain excerpts from minutes of the Consolidated Seeds-men's Union held during your term of office as president? A. That's right.

Q. Together with a letter from Mr. Voorhees, the attorney for the union, referred to in those minutes? A. Yes, sir.

Q. Now, to your knowledge, the minutes are accurate, are they not? A. Yes, sir, they are.



(Testimony of Harold Frauenberger.)

Q. Do you know who met with Mr. Meyberg on this matter of supplying a list of those employees who were not members of the Consolidated Seedsmen's Union?

Trial Examiner Paradise: Just so that this line of questioning will be intelligible to the Trial Examiner at this point, will you have the witness testify as to exactly what this was all about? I haven't read the minutes, and I don't know what they have referred to.

The Witness: Well, we did not have a closed shop agreement, and in order to protect our own members, we were endeavoring to bargain with the Germain Seed Company to the effect that non-union members would be discharged in preference—first in preference to our union members.

Trial Examiner Paradise: I see. When did that take place? [390]

The Witness: January 21st, I see the date in here. I would have to refer back to the dating of the minutes.

Trial Examiner Paradise: Well, I don't care for the exact time.

Q. (By Mr. Cobey) It happened during the months of January and February, 1938, did it not?

A. Yes, sir. Well, this was business of the directors. They were, of course, all associated with the business and knew the business. That is as near as I could answer your question.

(Testimony of Harold Frauenberger.)

Q. I see. You don't recall who particularly went in to see Mr. Meyberg on this matter?

A. No, sir, I don't. [391]

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BOARD EXHIBIT 24-A

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF

BOARD OF DIRECTORS  
(Meeting of January 18, 1938)

Page 2

Lines 26-31

There was considerable discussion in regard to supplying to the firm a list of members not in good standing, said list to be used when lay-offs are made by the Firm, and the possibility of penalizing the members through the advantages they have gained through this Union. The Secretary was instructed to obtain a written legal opinion on this matter from Mr. Voorhees, our attorney.

(Testimony of Harold Frauenberger.)

BOARD EXHIBIT 24-B

VOORHEES' & VOORHEES

Attorneys at Law

5325 Crenshaw Boulevard

Los Angeles

January 21st, 1938

Consolidated Seedsmen's Union, Inc.

2415 Twelfth Avenue

Los Angeles, California

Gentlemen:

We are informed by your secretary, Miss Turton, that you desire an opinion relative to the right of your Board of Directors to furnish the Germain Seed and Plant Company with a list of names of members who are delinquent in their dues and at the same time ask the company to place the names of these employees on a list of those to be laid off first in the event any lay-offs are necessary and to also give such members such types and kinds of work as is least desirable among the employees.

Such an arrangement can be made with the company but should only be done in the form of a written agreement. It, in effect, amounts to what is commonly known as a "closed shop". If it is done without a written agreement the company might be charged with aiding and encouraging a union. If, however, it comes about as a result of negotiations and a written agreement then the com-

(Testimony of Harold Frauenberger.)

pany, and your organization as well, will be adequately protected.

The reason for your inquiry is, of course, that you want in some way to compel your members to pay for the benefits received through your organization. On the other hand, the average employer does not wish to be placed in a position where he has no control over the employing and discharging of his employees. There is, however, a happy medium and solution to the problem which we have worked out in various other independent unions.

We have entered into agreements whereby the management will give preference to members of the union whenever hiring any employees. The management however is not absolutely bound to hire only members of the union. We also have agreements in which the union has a right to recommend the discharge of a member in the event he is expelled from the union for failure to pay dues or for any other reason.

One simple solution has been to have each and every member authorize the company in writing to deduct his or her dues from the pay check. This is, from a legal standpoint, an individual assignment of wages and is good until revoked by the member. It has been found to be one of the most effective ways to collect the dues and it in no way hinders or hampers the company in the hiring and discharging of employees.

(Testimony of Harold Frauenberger.)

May we suggest that you have a conference with the management and see if you can get them to enter into an agreement with you incorporating these various suggestions.

Very truly yours,

VOORHEES & VOORHEES,

By J. P. VOORHEES iu

JPV:iu

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BOARD EXHIBIT 24E

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF SPECIAL MEETING OF  
BOARD OF DIRECTORS

(Meeting of February 10, 1938)

Page 1

Line 9-17

The Secretary reported that Mr. Meyberg favored the following portion of the letter from Mr. J. P. Voorhees of January 21st: "We also have agreements in which the union has a right to recommend the discharge of a member in the event he is expelled from the Union for failure to pay dues or for any other reason." After considerable discussion, R. Luck was appointed to write



(Testimony of Harold Frauenberger.)

an agreement to be presented to Mr. Meyberg, said agreement to sanction the Union supplying to the firm a list of those employees of the firm who do not belong to the Union, those who have failed to pay their dues, and those who are agitating against the Union.

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BOARD EXHIBIT 24-F

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING OF  
BOARD OF DIRECTORS  
(Meeting of April 5, 1938)

Page 2

Line 13-18

Harold Frauenberger introduced the subject of further negotiations with the firm in regard to supplying a lay-off list. It was decided, after considerable discussion, to have the Secretary inquire of Mr. Voorhees what his fee would be to attend a meeting of the Board of Directors with Mr. Meyberg in regard to drawing up an agreement with the firm in relation to the supplying of a list of members in poor standing to be used for lay-offs.

(Testimony of Harold Frauenberger.)

Q. (By Mr. Cobey) Fr. Frauenberger, I call your attention to Board's Exhibit 25-A, for identification, and specifically to the second page thereof, on which the third paragraph is marked with an "X". Would you state whether that paragraph is a correct statement of the sentiment in that meeting of the members of the Consolidated Seedsmen's Union on the matter of closed shop?

A. Yes, sir. There was a former procedure, I might say, that we gradually worked into; the fact that we would send the driver—in other words, he would go to attempt to make the delivery and he would report back that there was a picket line, and the union, of course, would uphold him if he went to his union. In other words, we felt that in loading the merchandise out on the truck and attempting to make delivery we were acting in good faith, as far as the driver's job or work consisted of. [394]

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BOARD EXHIBIT 25-A

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

GENERAL MEETING OF MEMBERS OF  
CONSOLIDATED SEEDSMEN'S UNION, INC.

The general meeting of the Members of the Consolidated Seedsmen's Union was called to order by

(Testimony of Harold Frauenberger.)

the President, Harold Frauenberger, at 8:20 P.M. on December 14, 1937, at the Sons of Herman Hall, 25th and Main Streets, Los Angeles, California.

\* \* \* \* \*

It was the feeling of those present that our drivers, in making deliveries, should recognize picket lines where picketing was for bettering working conditions, wages, and hours; but that where picketing was for closed shop, that the picket lines not be recognized.

\* \* \* \* \*

/s/ DOROTHY TURTON,  
Secretary.

/s/ T. E. FOSLEY,  
V. P.

Q. (By Mr. Cobey) Mr. Frauenberger, in connection with your duties down at Germain's do you recall any occasions when you had occasion to speak to Mr. Luck about the delivery of seeds from his floor? A. To what destination?

Q. To any destination? I mean, in other words, would you tell us whether or not you, in the course of your duties, occasionally called up Mr. Luck in regard to the delivery of seeds from his floor to the shipping floor? Is that correct?

A. Well, that was the natural routine of the orders. The orders, of course, were filled in the

(Testimony of Harold Frauenberger.)

stock room and were brought to the delivery department.

Q. I see.

A. And at times a carton of merchandise would be left in the stock room, and in checking you would find that it was short, and that would be the natural inquiry concerning it.

Q. You would call up Mr. Luck and inquire as to the reason for the shortage?

A. Yes, that's correct. [395]

Q. I see. Now, Mr. Frauenberger, calling your attention to September 21st, or thereabouts, 1940, do you recall whether or not you had a conversation at that time with John Epperson, in regard to joining the A. F. of L.?

A. No, I don't.

Q. You don't recall any such conversation?

A. No. There was so much debate, in other words, throughout the year, since the very first talk of unionization, and there has been so much debate pro and con with almost everybody in the organization that I couldn't make a definite statement on a conversation.

Q. You don't recall noticing his A. F. of L. button and his asking you when you were going to join?

A. No; no. No, I don't. We noticed all the buttons, naturally, but I don't remember of any special instance where there was other than just debate, and there was a good deal of that, naturally, pro and con.

(Testimony of Harold Frauenberger.)

Q. You don't recall the conversation or debate on that particular occasion?

A. No, I don't remember of a special occasion.

[396]

Cross Examination

Q. (By Mr. Watkins) Mr. Frauenberger, while you were president, did you purchase any treatise or pamphlet on the Wagner Act?

A. Yes, sir, we did.

Q. For what reason?

A. To attempt to follow it to the best of our ability, as an independent organization bargaining for the employees.

Redirect Examination [397]

Q. Referring to the matter which is mentioned in Board's Exhibits 24-A, B, C, D, E and F, namely, the matter of furnishing the company with a list of members that were not in good standing, for the purpose of having them preferred in the matter of lay-offs and discharges, and so on, it is stated in Board's Exhibit 24-E that:

“The secretary reported that Mr. Meyberg favored the following portion of the letter from Mr. J. P. Voorhees of January 21st: ‘We also have agreements in which the union has a right to recommend the discharge of a member in the event he is expelled from the union for failure to pay dues or for any other reason.’ ”

Then it goes on to say that Mr. Luck was appointed to write an agreement to be presented to



(Testimony of Harold Frauenberger.)

Mr. Meyberg, said agreement to sanction the union's supplying to the firm a list of those members who do not belong to the union, who had failed to pay their dues and who are agitating against the union.

[398]

Now, the minutes of following meetings do not show any further disposition of the matter, beyond a statement that it was decided to have the secretary inquire of Mr. Voorhees what his fee would be to attend the meeting of the board of directors with Mr. Meyberg, in regard to drawing up an agreement in relation to the supplying of a list of members in poor standing to be used for lay-offs. Now, what, if anything, was done in connection with the matter?

A. I don't remember, to make a statement without checking back. Lists were furnished and the lay-offs automatically were gauged that way, naturally, because our own members in good standing would automatically be given preference. In other words, if a union member in good standing was laid off, we immediately went to bat for him and he was reinstated.

Q. Now, was that practice put into effect at about this time?      A. Yes, sir.

Q. That is the time referred to in these minutes?

A. Yes, sir. [399]

Q. (By Trial Examiner Paradise) Now, was there ever any notice posted concerning the practice regarding lay-offs, as described by you?

(Testimony of Harold Frauenberger.)

A. It was brought up in the membership meetings and talked over, and discussed and debated.

Q. Now, to what extent did the union seek to have this practice applied? That is, was it limited to members in bad standing of the union, or to people who had not been members of the union at all, or did it include those that were agitat- [400] ing against the union?

A. Members in bad standing that had not paid their dues; that is what we assumed was poor standing, and non-members.

Q. I see. Now, this third classification mentioned in Board's Exhibit 24-E, namely, those who were agitating against the union, was that forgotten about?

A. I don't remember that we were troubled with that.

Q. I see.

A. And that it never came up as a real problem. [401]

Q. (By Trial Examiner Paradise) Mr. Frauenberger, what was it that precipitated the discussion in your meeting of December 14, 1937 as to the matter of your drivers crossing picket lines? [406]

A. Well, that would be a natural discussion, when you are confronted with a problem of that sort. The drivers, the members, that were affected by picket lines would bring it up in the meeting and tell us about it.

(Testimony of Harold Frauenberger.)

Q. Had there been some drivers who had had the problem at that time?

A. Oh, yes. It was continuous, generally, throughout my term of office.

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KENNETH RICHARD LUCK,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [407]

Direct Examination

Trial Examiner Paradise: State your name and address.

The Witness: Kenneth Richard Luck, 637 North Gardner, Los Angeles.

Q. (By Mr. Cobey) Mr. Luck, you work down at Germain's, do you not?

A. Yes, that's right.

Q. How long have you been employed there?

A. Since 1936.

Q. What have been your duties down there? What have you done, in other words?

A. When I was first employed there, I worked under Mr. Pieters in the flower seed and bulb department.

Q. Where is that department located?

A. You mean the address?

Q. No, I mean within the warehouse.

(Testimony of Kenneth Richard Luck.)

A. It is on the third floor of the warehouse, yes. And after a short time there, I don't know just how long, possibly nine months or a year, I took over the bulb department, of course, with Mr. Pieter's supervision, and since the first of this year I have been out in the city and county as a salesman.

Q. I see. Can you tell us what your rates of pay have been?

A. Well, I started there at \$80 a month. I talked to Mr. Meyberg, as purely a trial proposition for both of us. We did [408] not know each other. Then I have been gradually increased.

Q. What are you making now?

A. \$120 a month.

Q. What were you making when you were in charge of the bulb department under Mr. Pieters?

A. \$120 a month.

Q. Now, while you were working in the bulb department, did you have occasion in the course of your duties to talk over the telephone with Mr. Frauenberger?      A. Yes.

Q. Do you happen to recall whether or not he would call you up in regard to shortages, and that sort of thing?

A. That would be one of the many things, yes.

Q. Would he tell you that you had to have the seeds, or whatever it was, down on the shipping floor at such and such a time, or such as that?

A. There are various rules and bulletins on that

(Testimony of Kenneth Richard Luck.)

sort of thing, yes. Those rules varied from time to time. I believe it was his duty to see that the merchandise went out, and if it wasn't ready to go out at a certain time, he was to find out why.

Q. And in that connection he would call you up in your department? A. That's right.

Q. I see. Now, you joined the Consolidated Seedsmen's Union, [409] did you not?

A. Yes.

Q. As a matter of fact, you were a member of the pre-organizational committee and a member of the formational committee, and an incorporator, were you not? A. I believe so.

Q. I think you were also a director of Division No. 2 of that union from September of 1937 to January of 1939? Is that right, or is that your recollection?

A. I was a director of the division that constituted the third floor. I believe it was No. 2. I don't know just what number it had. I think it was for a two-year period. I am not certain.

Q. A two-year period. Then you were director of that division again more recently? Didn't you take somebody else's place, and your term expired in January, 1940? Do you recall whether you did that or not?

A. I am not sure. At various times there was a little difficulty with directors. They either didn't want to serve, or something, and I may have served for a partial term.



(Testimony of **Kenneth Richard Luck**.)

Q. But you don't recall?

A. I am not positive about that.

Q. You were president of the Consolidated Seedsmen's Union from April, 1938, to April, 1939, were you not?      A. That's right. [410]

Q. And you were secretary from April, 1939 to April, 1940; would that be correct?

A. That's right.

Q. Now, do you recall how this pre-organization committee was selected?

A. No, I don't know of any real way, how it was selected.

Q. How were you picked?

A. I don't honestly know how I was picked. It seemed like there was a representative from each floor or each group of workers. I don't know of any reason why I should have been picked, except for the fact that there was at the time only one or two other men working on that floor, and the women were somewhat backward about being at all interested in any activity.

Q. Now, this is just in order to expedite things. There has been testimony here that there were a couple of meetings in the warehouse during August and September of 1937, and there was a meeting at the Hill Street store, and that there was an election held in the warehouse. Do you have any recollection whatsoever in regard to that?

A. Yes. I think there have been several meetings

(Testimony of Kenneth Richard Luck.)

of the various groups, I think before the union was organized. There were, naturally, groups of men and employees that got together for meetings, there was one I know of at the Hill Street store, but I don't recall positively whether that was before [411] the union was organized or not.

Q. Do you recall the meetings in the warehouse at all? There has been testimony that there were two meetings in the warehouse.

A. I think there were two, yes.

Q. And at one of them Mr. Sage spoke and at the other Mr. Voorhees and Mr. Sage spoke?

A. I remember Mr. Sage being there. I don't remember Mr. Voorhees. He may have spoken. I don't know. At that time I didn't know Mr. Voorhees.

Q. Now, do you recall what Mr. Sage said at those meetings or that meeting?

A. I couldn't say exactly. Of course, there was talk of unionizing and Mr. Sage talked, I think, with one or two other men, and as I remember, there was talk of the various unions and Mr. Sage said he wasn't in favor it, because he didn't want to join a union, and if the house was unionized he would have to join; something of that nature, anyway.

Q. Do you remember anything else about those meetings at all, as to what was said and what happened?

A. I couldn't say positively what was said. It

(Testimony of Kenneth Richard Luck.)

was just general talk, and there was no system, you know. It was just a group of fellows getting together.

Q. Now, do you recall the election being held in the warehouse? [412]

A. There have been several elections held there. That is, at least——

Q. Mr. Luck, I show you Board's Exhibit 8.

(Handing document to witness.)

A. Oh, yes.

Q. Do you remember such a ballot being used in an election at the warehouse?           A. Yes.

Q. Do you know how that election was arranged?

A. I don't just know what you mean, how it was arranged.

Q. In other words, how were you informed that an election was going to be held?

A. Well, there was constant talk all through the organization about this, and some of the fellows wanted to join the C. I. O., and some wanted to join the A. F. of L., some of them were in favor of the independent union, and some of them didn't just exactly know the circumstances or conditions of any of them, and thought they ought to have a little more knowledge of the thing and maybe Mr. Meyberg could explain it, tell what it was all about.

Q. Do you happen to know whether or not the C. I. O. had done any organizing at that time?

A. I don't know whether any of them had done any organizing or not.

(Testimony of Kenneth Richard Luck.)

Q. You were not familiar with any of the organizational [413] activities at all?

A. No. There was talk of all of them.

Q. Did you vote in that election?

A. I believe so.

Q. Do you remember when and where you voted?

A. I imagine I voted on the third floor on whatever day it was held.

Q. It was during working hours, was it not?

A. Probably; probably. [414]

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BOARD EXHIBIT 28-A

Copied from the minute book of Consolidated Seedsman's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

GERENAL MEETING OF THE MEMBERS  
OF CONSOLIDATED SEEDSMEN'S UNION, INC.

(Meeting of April 18, 1938)

Page 1

Line 19-23

The matter of vacations with pay was discussed, and the Board of Directors are to approach the firm at an early date in regard to securing one week vacation with pay for employees who have been with the firm up to five years and over one year; and two

(Testimony of Kenneth Richard Luck.)

weeks vacation with pay for employees who have been with the firm five years and over.

It was decided that every thing should be put to a vote so that all would know how the discussion of a subject resulted.

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BOARD EXHIBIT 28-C

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING OF  
BOARD OF DIRECTORS  
(Meeting of May 3, 1938)

Page 2

Line 2-16

It was moved by Harold Frauenberger and seconded by Fern Wingrove that the Board of Directors meet with Mr. Meyberg at the earliest possible date to talk over the matter of two week's vacation with pay to members who have been with the firm five years or more, continuously; and one week's vacation with pay to members who have been with the firm over one year, continuously, also any other matters that should be discussed at that time. Motion carried. The Secretary was instructed to make an appointment with Mr. Meyberg for this meeting.



(Testimony of Kenneth Richard Luck.)

The following topics were decided upon to be presented to the firm:

Vacations—1 week with pay to those over 1 yr, continuously. 2 weeks with pay to those 5 yrs. or over, continuously.

Time-and-a-half for overtime for the Drivers. (So far they are only getting straight time—L. Marquez & Stanley Watson.)

3rd Floor Girls—Regular employees should receive more than the extra temporary girls being hired at the present time.

Main St. Store—What are the store hours for waiting on customers?

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### BOARD EXHIBIT 28-D

Copied from minute book of Consolidated Seedsmen's Union. Proofread by Gladys Van Sickle, April 17, 1941.

HIGHLIGHTS OF MEETING OF BOARD OF DIRECTORS WITH MR. MEYBERG AND MR. SCHOENFELD, HELD AT THE HILL ST. STORE ON THE EVENING OF MAY 12, 1938.

Vacations: Mr. Meyberg stated the future did not look too bright, and therefore felt they should keep expenses down. However, it was shown by departments that very few would be entitled to two weeks

(Testimony of Kenneth Richard Luck.)

with pay. Mr. Meyberg said that at the present time the retail stores are only breaking even, the consignment department always runs in the red, the ranches are okay, also northern branches. However, he would leave it to the Board of Directors to decide as to whether the requested schedule on vacations be put through. However, then he would feel he was overmanned and would have to cut down on the number of employees.

Mr. Luck reported everyone didn't know whether they were to have one week's vacation with pay or not. Mr. Meyberg stated a bulletin would be posted at once in this regard, and that vacations are to be arranged with the department heads so as not to disorganize the department.

In regard to James Neal being laid off on 5th floor and not rehired on 3rd floor, Mr. Meyberg said he would see that those who have been with the firm, when laid off, are to be the first ones called back.

Mr. Meyberg said he would check into and straighten out the matter of the drivers getting time-and-a-half for overtime, as agreed to last fall.

On the 3rd floor, girls hired who have not worked in that department before, will be hired as apprentices and paid accordingly. Also, any overtime on the third floor will be evenly distributed between all those girls desiring to work the extra time.

(Testimony of Kenneth Richard Luck.)

Main St. doors should open at 9 o'clock. However, if an insistant customer demands admission, courtesy rules.

If retail store members wish time off, ask for it and it will be arranged.

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### BOARD EXHIBIT 28-E

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

### GENERAL MEETING OF THE MEMBERS OF CONSOLIDATED SEEDSMEN'S UNION, INC.

The general meeting of the Members of the Consolidated Seedsmen's Union was called to order by President R. Luck, at 8:05 P. M. on May 16, 1938, at the Sons of Herman Hall, 25th and Main Streets, Los Angeles, California.

The minutes of the last regular General Meeting held April 18th were read by the Secretary, and were approved as read.

President Luck, with the assistance of the Directors present and the Secretary, reported about the meeting of the Board of Directors with Mr. Meyberg and Mr. Schoenfeld on May 12th, which was as follows:

(Testimony of Kenneth Richard Luck.)

Those employees who have been with the firm over one year will receive one week's vacation with pay, said vacation to be arranged with the Department Head. When employees are laid off due to slack season, they are to be the first ones called back, whether in the same department or some other department, providing they can do the work. The matter of overtime for the drivers will be adjusted. New girls hired on the 3rd floor, who have not worked in that department before, will be put on as apprentices and paid as such. Overtime on the third floor will be evenly distributed between those desiring the extra work. Retail stores regularly open at 9 o'clock A. M., except in special cases when customers demand admission. Employees at the retail stores may have time off if they will ask for it and arrange for it.

The balance of the meeting was given over to discussion of the picnic to be held May 22nd. Many parks were suggested, and it was moved by Allan Hook, seconded by Mr. Wall, and carried, that the picnic be held at a public park.

It was moved by Dorathy Davis, seconded by Tom Farley, and carried that the picnic be held at Orange County Park.

Louis Marquez said he would drive the truck and take those who do not have transportation.

It was moved by Tom Farley, seconded by Morris Stearn, and seconded, that everyone meet at the

(Testimony of Kenneth Richard Luck.)

Warehouse, 747 Terminal St., on May 22nd at 9:30 in the morning, and the truck to leave there not later than 10:00 A. M.

Stanley Watson, Viola Gates, and Louis Marquez were appointed to get the Beer, Soft Drinks, Ice and Wood; Dorothy Turton to get the Coffee, Ice Cream, etc.

It was moved by Mr. Wall, seconded by Louis Marquez, and carried, that refreshments be served at every General Meeting.

The Treasurer make the following report:

Cash on hand Feb. 1, 1938.....	\$94.04
Initiation and Dues.....	44.50
	<hr/>
	138.54
Expenses .....	25.02
	<hr/>
Cash on hand March 1, 1938.....	113.52
Dues .....	41.00
	<hr/>
	154.52
Expenses .....	23.31
	<hr/>
Cash on hand April 1, 1938.....	127.21
Initiation and Dues.....	38.00
	<hr/>
	166.21
Expenses .....	18.31
	<hr/>
Cash on hand May 1, 1938.....	\$147.90



(Testimony of Kenneth Richard Luck.)

As there was no further business, it was moved by Tom Farley, seconded by Morris Stearn, and carried, that the meeting adjourn.

/s/ DOROTHY TURTON

Secretary

/s/ K. R. LUCK

President

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Q. Now, I call your attention to the fact that on Board Exhibit 29-E, for identification, at the bottom of that exhibit, which is one page, there is a list of three items which Mr. Meyberg wants. Can you state whether or not those items were subsequently furnished to him?

A. In our effort to gain strength in our union, we asked Mr. [423] Meyberg for various concessions, and, apparently, to give us some proper answer or response to these demands that we were making, he said he would have to have these reports, and as far as I know, he got them all.

Q. To your knowledge, they were subsequently given to him, that is, the three items requested?

A. Yes, they should have been.

Q. (Continuing)—on Board's Exhibit 29-E, for identification?

A. Yes, by the secretary of the union at the time. I don't know—was that meeting on—

(Testimony of Kenneth Richard Luck.)

Q. On September 9, 1938.

A. I couldn't say, of course, whether he actually got the lists or not, but he was supposed to have received them from the secretary of the union.

Q. Who was Violet Ashley at that time, was it not?

A. It probably was. She was secretary at one time.

Q. Now, Mr. Luck, I call your attention to Board's Exhibit 29-F, for identification, and I ask you whether or not the original of Board's Exhibit 29-F, for identification, was sent to Mr. Meyberg?

A. That would be the assumption, yes. It was written to him. It surely was.

Q. Do you know whether or not such a letter as Board's Exhibit 29-F, for identification, was prepared each month and [424] sent to Mr. Meyberg?

A. I know it was supposed to have been, but I think at various intervals during the year there was no union member in good standing who was not employed, or something of that nature, which made it of no point to submit a blank, apparently, and then possibly for the next month it might have been overlooked. I can't say that those lists were at all regular in coming. In fact, when I was secretary, I know they weren't because the secretary was to make that list up from names given the secretary by the directors of the various departments, and when I was secretary and didn't get a list, I assumed it was all right and I didn't write one.

(Testimony of Kenneth Richard Luck.)

Q. You didn't write one. Do you know whether or not such a list as to which you have been testifying ever included, in addition to a list of unemployed union members or a list of non-members that were employed, also a list of the union members employed who were delinquent in their dues?

A. It probably did, because we were trying to get a closed shop, and as I say, trying to get strength, and we wanted to eliminate members in bad standing, apparently, or people who wouldn't join, and we tried to bring pressure upon them to join. [425]

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BOARD EXHIBIT 29-A

Copied from minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING OF  
BOARD OF DIRECTORS  
(Meeting of May 3, 1938)

Page 1

line 14-19

The Secretary reported that she had called Mr. Voorhees, and he said he would meet with the Board of Directors and Mr. Meyberg to discuss the matter of supplying the firm with a lay-off list of members

(Testimony of Kenneth Richard Luck.)  
delinquent in dues or detrimental to the firm or the Union and suggested for lay-off. It was decided that at the present time there was no need for such a list and therefore the matter will not be followed up for the present.

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BOARD EXHIBIT 29-C

Copied from the minute book of Consolidated Seedsmen's Union on April 15, 1941, By Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING OF  
BOARD OF DIRECTORS

(Meeting of September 6, 1938)

Page 1

Line 11-16

There was a discussion on members and non-members in the company, the hiring of non-members before members who are unemployed, with special reference to Hazel Brown and Marion Linn. President Luck suggested that the Directors have a meeting with Mr. Meyberg, Friday morning, September 9th, if it could be arranged.

(Testimony of Kenneth Richard Luck.)

BOARD EXHIBIT 29-D

Copied from the minute book of Consolidated Seaman's Union on April 15, 1941 by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING OF  
BOARD OF DIRECTORS

(Meeting of September 6, 1938)

Page 2, Line 25-32, and Page 3, Line 1-11

In the meeting with Mr. Meyberg on Friday the following matters were taken up:

- (1) eight hours at the ranch with the same pay instead of nine hours
- (2) employing non-union members before members

Non-Union members employed at Germain's:

Traffic Dept.—None

Office—Sarah Blomgren, Georgia South, Clara Seastedt, Charlotte Miller, Audrey Seaman, Marguerite Hanna, Charles Wilson

3rd Floor—Nyda Crayton

4, 5 & 6 Floors—None

Hill St.—None

Main St.—None

Ranch 26—None



(Testimony of Kenneth Richard Luck.)

Union Members not employed:

Hazel Brown  
Marion Linn  
Ruth Grey  
Virginia Bland  
Theodore Follingstad

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### BOARD EXHIBIT 29-E

Copied from minute book of Consolidated Seedsman's Union. Proofread by Gladys Van Sickle, April 17, 1941.

### MEETING WITH MR. MEYBERG

September 9, 1938

Mr. Luck was spokesman for the Directors. First he brought up the matter of people being hired who are not Union members. Mr. Meyberg asked that he be given a monthly list of the unemployed members of the Union, and said he would see that they were shown preference over outsiders, particularly on the radio work just coming up.

Mr. Luck mentioned members of the office who will not join the Union. Mr. Meyberg said it was their privilege to join or not as they like, and said he absolutely did not believe in having a closed shop.

Amos Kays and Erich Regan discussed the Ranch problem of eight hours a day, instead of nine with

(Testimony of Kenneth Richard Luck.)

the same pay. Mr. Meyberg said he would talk with Mr. Marks about it and they would work out something satisfactory. He promised to go out to the ranch the next week to meet with the members of the Ranch and get some action upon the matter.

Erich Regan suggested that Mr. Follingstad be brought down to the Wholesale. Mr. Meyberg objected to having members transferred from one division to another, but promised to work out something.

In regard to the dance discussed at the last Director's meeting, Mr. Meyberg said any Saturday night in October would be agreeable with him. We have his permission to begin fixing the Shipping Floor on the morning of that Saturday.

Mr. Meyberg wants:

1—a complete list of all members of the Union according to departments.

2—a monthly report of unemployed members, mentioning the departments in which they are suited.

3—a monthly report of members not in good standing.

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#### BOARD'S EXHIBIT 29-F

Mr. M. Meyberg.

Following is a list of the unemployed Union members as reported to me at the Directors meeting of February 7th, 1939:

(Testimony of Kenneth Richard Luck.)

Third Floor:

Iris Slafter

Virginia Bland

Irene Wallace

Irma Wright

Ruth Gray

Members in all other departments are working at the present time.

Respectfully,

CONSOLIDATED SEEDSMEN'S  
UNION, INC.,

B. EATON,

Secy.

Reported—2/10—See notes.

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Q. Now, with respect to Board's Exhibit 30-A, for identifica- [429] tion, you will note that it states:

“It was decided to leave the matter up to Mr. Luck, to ascertain whether the picketing is for betterment of employees' conditions at Taylor Milling, or whether it is purely a union disagreement, and whether our drivers go through the line or not.”

Can you tell me what investigation you made and what action you took?

(Testimony of Kenneth Richard Luck.)

A. My information on this came from the truck drivers themselves, and at the time this was presented all the information we had was that there was a picket line there, and the truck drivers were going to find out about it. We wanted to cooperate with the union, whatever union it was that

(Testimony of Kenneth Richard Luck.)

was picketing, providing their idea was for the betterment of the employees of this Taylor Milling Company, but we felt if it was purely a jurisdictional dispute between the C. I. O. and the A.F. of L., or any other two organizations, there would be no justification of why Germain's business or any firm's that our union was dealing with, why it should not be carried on.

Q. I see. I call your attention to Board's Exhibit 30-B, for identification. It states: "Mr. Harrison suggested that if the persons already members did not pay up their back dues and become a member in good standing, that they be dropped definitely." [430]

Can you tell me whether or not any such action was taken?

The Witness: I believe not. The board of directors didn't think that was a good policy. They were still carried as members, but not in good standing. [431]



(Testimony of Kenneth Richard Luck.)

BOARD EXHIBIT 30-A

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from  
MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS  
(Meeting of August 9, 1938)

Page 3

Line 26-32

President Luck reported that at the present time there is picketing at the Taylor Milling Company, and asked whether our drivers should acknowledge the picket line, or go through it. It was decided to leave the matter up to Mr. Luck, to ascertain whether the picketing is for betterment of employees' conditions at Taylor Milling, or whether it is purely a union disagreement, and whether our drivers go through the line or not.

(Testimony of Kenneth Richard Luck.)

BOARD EXHIBIT 30-B

Copied from the minute book of Consolidated Seedsmen's Union on April 16, 1941, by Gladys Van Sickle.

Excerpt from

GENERAL MEETING OF THE MEMBERS  
OF THE CONSOLIDATED SEEDSMEN'S  
UNION, INC.

(Meeting of January 16, 1939)

Page 1

Lines 17-27

Mr. Porter of the Hill Street Store discussed the subject of why the members at Hill Street did not keep up their dues. They did not think that they were taken care of as well as some of the other departments, and that they were all members and that it was not fair, as in some of the other divisions they were not 100% members. Mr. Luck explained that Mr. Meyberg did not believe in a closed shop—and that he would not force a person to join the union if he did not want to. Mr. Harrison suggested that if the persons already members did not pay up their back dues and become a member in good standing, that they be dropped definitely.

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Q. Now, in connection with Board's Exhibit 31-A, for identification, I call your attention to the

(Testimony of Kenneth Richard Luck.)

fact that it is headed, "Suggestions," and the first suggestion is, "Write letter of appreciation to firm for \$10 and paying fine."

Do you know as to what that suggestion refers?

A. It apparently refers to a picnic that the union gave, invited the firm members and, as I recall, all employees of the firm, with the idea of creating a better understanding between the members and the non-members; and also the union, that is, the members and the people who weren't members and the firm, and in reciprocation, apparently, for the invitation, various games and activities at the picnic, the firm donated a \$10 prize to some team, or some such thing. And the paying of the fine, as I recall it, was that one of the members of the union was arrested for speeding on the way back after the picnic. I don't know who wrote it though.

Q. I call attention to Board's Exhibit 31-B, for identification. That letter was sent, was it not?

A. Yes. [434]

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## BOARD EXHIBIT 31-A

### SUGGESTIONS

Write letter of appreciation to firm for \$10.00 and paying fine.

Notify everyone that the button they are getting this month is to be kept.

See about getting receipt books or something to

(Testimony of Kenneth Richard Luck.)

give receipt on payment of dues, now that there won't be a button to give out each time.

Sons of Herman Hall is reserved for the next General Meeting, June 20th. It has to be spoken for each meeting. I ask for it each meeting nite for the next time.

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BOARD EXHIBIT 31-B

CONSOLIDATED SEEDSMEN'S UNION, INC.  
2415 12th Avenue  
Los Angeles, Calif.

May 19, 1938

Germain Seed & Plant Company  
747 Terminal Street  
Los Angeles, California  
Attention: Mr. Manfred Meyberg  
Gentlemen:

The Consolidated Seedsmen's Union are planning an entertainment in the form of a picnic for our members, their families and friends, to be held on Sunday, May 22nd, at Orange County Park.

We would appreciate the presence of the Officers of the firm as our guests, and hope that all may come.

In the way of cooperation, we would appreciate the use of a truck for the day, which Louis Mar-

(Testimony of Kenneth Richard Luck.)

quez has offered to drive, also some sacks etc. to be used for entertainment; and any financial consideration that the firm would deem *feasible* for for the event will be greatly appreciated.

Hoping to see everyone at our picnic, and with kindest regards, we remain

Yours very truly,

CONSOLIDATED SEEDSMEN'S  
UNION, INC.

RL:DT

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BOARD EXHIBIT 31-C

CONSOLIDATED SEEDSMEN'S UNION, INC.

Los Angeles, Calif.

June 18, 1938

Germain Seed & Plant Company

747 Terminal Street

Los Angeles, California

Attention: Mr. Manfred Meyberg

Gentlemen:

On May 22nd, 1938, we, the members of the Consolidated Seedsmen's Union, held a picnic at Orange County Park for the families and friends of the Union members.

We wish to express our thanks to you for the very generous financial aid and support which you contributed to its success. We appreciate this help



(Testimony of Kenneth Richard Luck.)

and feel that it has caused a definite improvement in the spirit and good-fellowship among the employees of the Germain Seed & Plant Company.

Sincerely,

CONSOLIDATED SEEDSMEN'S  
UNION, INC.

K. R. LUCK, Pres.

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BOARD EXHIBIT 31-D

CONSOLIDATED SEEDSMEN'S UNION, INC.

Los Angeles, Calif.

September 7, 1938

Mr. Manfred Meyberg  
Germain Seed & Plant Company  
747 Terminal Street  
Los Angeles, California

Dear Mr. Meyberg:

The Consolidated Seedsmen's Union's Board of Directors wish me to express to you their thanks and appreciation for the help and cooperation you and the Germain Seed & Plant Company extended to the Union in connection with the Weenie Roast held last July 30th.

With your help, the Weenie Roast was a huge success. Thanks a lot.

Sincerely

Secretary Pro Tem

Consolidated Seedsmen's Union

(Testimony of Kenneth Richard Luck.)

BOARD EXHIBIT 31-E

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS

(Meeting of June 7, 1938)

Page 2

Line 8-11

It was moved by A. Hook, seconded by Tom Farley, and carried, that a letter be sent to the firm expressing our thanks and appreciation of the support given us at our Picnic held May 22nd.

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BOARD EXHIBIT 31-F

Copied from the minute book of Consolidated Seedsman's Union on April 15, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS

(Meeting of August 9, 1938)

Page 3

Line 8-10

The Secretary was instructed to write the firm a

(Testimony of Kenneth Richard Luck.)

letter of thanks and appreciation for the use of the truck for the weenie roast.

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BOARD EXHIBIT 32-A  
CONSOLIDATED SEEDSMEN UNION  
Los Angeles, Calif.

Germain Seed & Plant Co.                      April 11, 1939  
747 Terminal St.  
Los Angeles, Calif.

Att. Mr. Meyberg

At the last regular meeting of the Board of Directors of the Consolidated Seedsmen Union the annual election of Officers of the Union was held. The Board deemed it advisable to inform you of the results, hoping you will note the changes so as to aid you in any pending communications or negotiations.

Pres.—Mr. Richard Kadous  
Vice Pres.—Mr. Eric Regan  
Tres.—Miss Viola Gates  
Sec.—Mr. K. R. Luck

The regular monthly meeting of the Board of Directors is the first Tuesday of the month making the next one fall on the 2nd of May. The Board feels that a little closer relationship between the Union and the Germain Seed & Plant Co. would be in order. In order to achieve this the Board is inviting you to attend the next meeting; this invita-

(Testimony of Kenneth Richard Luck.)

tion is extended to the following: Mr. Meyberg, Mr. Schoenfeld, Mr. Marks, Mr. Clark, Mr. Hill, Mr. Gates, Mr. Pieters, Mrs. Chorán, Miss Wilson, Miss Jeanne Court, and Mr. Sidebottom.

This meeting will be at 7:00 P.M. at Diana's Cafe at 4109 W. Pico Blvd. L. A. We will appreciate your cooperation in this matter by letting us know as soon as is convenient, the approximate number who can attend, so proper arrangements can be made for the meals.

Very truly yours,

CONSOLIDATED SEEDSMEN  
UNION

PRES. RICHARD KADOUS

Sec.—K.R.L.

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BOARD EXHIBIT 32-B

Copied from the minute book of Consolidated Seedsman's Union on April 14, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING  
OF

BOARD OF DIRECTORS

(Meeting of April 4, 1939)

Page 1

Line 24-27

It was suggested that the Representatives of the Union be invited to the next Directors Meeting in

(Testimony of Kenneth Richard Luck.)

*ordre* to secure more widespread cooperation and interest. It was also thought advisable to invite the following members of Germain's: Mr. Meyberg, Mr. Schoenfeld, Mr. Pieters, Mr. Marks, Mr. Clark, Mr. Hill, Mr. Gates, Mrs. Coahran, Miss Jeanne Court, Miss Wilson, and Mr. Sidebottom or a suitable substitute from each department.

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BOARD EXHIBIT 33-A

Copied from the minute book of Consolidated Seedsman's Union on April 14, 1941, by Gladys Van Sickle.

Excerpt from  
MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS  
(Meeting of Sept. 5, 1939)

Page 1

Line 12-15

There was some discussion about salaries and the Director from Division #3 introduced a Petition signed by members of the Division requesting that the Union approach Mr. Meyberg to secure a raise in pay. The Petition was quite general and made no definite requests so Mr. Epperson moved to delay action on it until after the next general meeting



(Testimony of Kenneth Richard Luck.)

so some of the signers could express their viewpoints. This was seconded by Mr. Farley and carried.

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BOARD EXHIBIT 33-B

Copied from the minute book of Consolidated Seedsman's Union on April 14, 1941, by Gladys Van Sickle.

Excerpt from  
MINUTES OF MEETING  
OF  
BOARD OF DIRECTORS  
(Meeting of October 3, 1939)

Page 1

Line 6-7

The President mentioned the Petition which was signed by the members of one division and said that practically all of the people who were entitled to a raise had received it.

(Testimony of Kenneth Richard Luck.)

BOARD EXHIBIT 33-D

Copied from the minute book of Consolidated Seedsman's Union on April 14, 1941, by Gladys Van Sickle.

Excerpt from

MINUTES OF MEETING

OF

BOARD OF DIRECTORS

(Meeting of December 5, 1939)

Page 1

Line 24-29

Miss Wingrove made a motion that a letter be sent to Mr. Meyberg requesting that the employees at the wholesale have an additional half day off before Christmas or New Years and that the employees of the retail stores have a corresponding half day off as soon as possible and convenient. This motion was seconded by Mr. Epperson and carried.

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Q. (By Mr. Cobey) Now, Mr. Luck, I call your attention to Board's Exhibit 33-D, in which reference is made to a letter to [437] be sent to Mr. Meyberg, requesting that the employees in the wholesale be given an additional half day off before Christmas and New Years, and so forth. Do you know whether that letter was sent?

(Testimony of Kenneth Richard Luck.)

A. It probably was. As I recall, it was granted, yes.

Trial Examiner Paradise: Now, I didn't know whether there was going to be anything further on Board's Exhibits 32-A to C, which deal with the invitation extended to the various representatives of the company to attend a meeting of the board of directors of the union on May 2nd. The minutes do not show what the outcome of the invitation was, or whether, in fact, the company representatives attended the meeting.

Do you know anything about that, Mr. Witness?

The Witness: Yes. They attended the meeting.

Trial Examiner Paradise: Were you there, by the way?

The Witness: Yes.

Trial Examiner Paradise: All right, go ahead, counsel.

Mr. Cobey: I just wanted to state, Mr. Examiner, that I think in Board's Exhibit 32-C there is a reference to the fact that such a meeting did take place.

Q. (By Mr. Cobey) As I understand it, referring again to Board's Exhibit 32, that was a social meeting to acquaint the management with the new officers of the union? Is that correct? [438]

A. Yes, that's the idea.

Q. There were no negotiations at that meeting, were there?

(Testimony of Kenneth Richard Luck.)

A. No. We really—as I recall it, we really didn't carry on any fundamental business of the union at that time. Of course, there may have been an ulterior motive in the minds of the board of directors in having it there. I mean, it wasn't there just for nothing. We expected to derive some benefit from it.

Q. Now, when you were secretary, it was your function to notify the board of directors of the meetings for the board of directors?

A. That's right.

Q. How was that notification made? [439]

Mr. Watkins: We will stipulate that he will testify it was done similarly to the way the others testified.

The Witness: Generally, we just gave notices written to the individual board members.

Q. (By Mr. Cobey) You took them around and distributed them personally?

A. That's right.

Q. On the job?

A. Yes. You see, we are not confined—at least, I wasn't confined to any particular spot. It is not a machine operating proposition, and possibly that is why various people who were officers were given the office, in that they had considerable mobility. I mean, there was nothing against me going from one floor to another, if business required that.

Q. And while you were on that job, you did give these notices? A. Why, surely.

(Testimony of **Kenneth Richard Luck**.)

Q. Now, during the time when you were president and during the time when you were secretary, do you recall any request being made for a written contract?      A. By whom?

Q. By the Consolidated Seedsmen's Union of the Germain Seed and Plant Company.

A. Yes. We were always striving to achieve more, and what we did achieve, we wanted it in writing, if we could get it.

Q. Did you ever request it? [440]

A. I believe so.

Q. Did you ever draw up a proposed contract and present it to the management?

A. I couldn't say for sure whether it was when I was president or not, but it seemed like we had several agreements written. I wrote one or two myself to be signed, yes.

Q. Do you know what happened to those agreements that you wrote?

A. I believe pretty nearly without exception they were turned back and were not signed, with the understanding that there was no necessity of having them signed, that the agreement was an understanding and would be followed through as readily—the verbal understanding as well as a written one.

Q. What was the subject matter of those agreements?

A. Offhand, I couldn't say specifically, but, apparently, were the problems we were constantly working on in our conferences with the firm.



(Testimony of Kenneth Richard Luck.)

Q. Now, do you know what happened to those agreements after they were turned back to you?

A. No. It seems as though when I was secretary I had quite a sheaf of things like that, and the ones that were turned back when I was secretary, I think I just stuck them back in the file, and I imagine that is what the previous secretary did. However, they may have just been thrown away as useless, as long as we were left with the agreement in a verbal understand- [441] ing, and the writing was something—at least, we didn't succeed in achieving a written agreement at that time. They might have been just destroyed or thrown out, and probably were.

Q. Now, Mr. Luck, the files are here under subpoena, so I would like to request you, after you get off the stand, would you mind looking through those files and seeing if you could find any such agreements? A. All right.

Mr. Watkins: You mean the files that are up here with the Board?

Mr. Cobey: Yes.

Trial Examiner Paradise: You mean agreements which the union requested and were not granted?

Mr. Cobey: Yes. The ones to which Mr. Luck referred.

The Witness: I wouldn't say the agreements weren't granted. They weren't granted in writing.

Mr. Cobey: Yes, that is correct.

(Testimony of Kenneth Richard Luck.)

Q. (By Mr. Cobey) Do you know whether or not the Consolidated Seedsmen's Union made any threat to the company during the time while you were president or secretary, that it would take economic action if its demands were not granted?

Mr. Watkins: Is that the prerequisite to a good union? Is that the purpose of the question?

The Witness: What do you mean "economic action"? [442]

Q. (By Mr. Cobey) In other words, the German Seed and Plant Company did not grant to you all that you asked, did it? A. No.

Q. Now, when certain demands were refused, did you ever threaten to resort to a strike or boycott in the event those demands were not granted?

A. Not to my knowledge.

Q. You understand that I mean the board of directors of the Consolidated Seedsmen's Union?

A. I don't believe that we made any particular threats, no.

Q. Did you make any statements to that effect?

A. No.

Mr. Cobey: That is all.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Luck, did you ever get permission from the management to contact other employees about union meetings and things of that kind at the plant, or did you just do it on your own?

(Testimony of Kenneth Richard Luck.)

A. I don't remember asking permission to do it.

Q. As far as your work is concerned, I believe you said you were in charge of the bulb department. Are there times when you are the only one in the bulb department, or were there times?

A. Yes, there were.

Q. What is the largest number that you have ever had up there, [443] while you were in the bulb department?

A. I believe three, possibly four other people.

Q. Did you have any power, while you were there, to hire or fire employees?           A. No.

Q. Or to recommend hiring or firing employees?

A. Well, I could certainly recommend it, whether I was in any position or not. I mean, as to having the ability to, why, in my department at times it was very busy and we did have more people, and when some of them possibly weren't getting the job done, I would go to Mr. Pieters, who was in charge of that department as to hiring and firing, and tell him I would like to have somebody either replaced or put on some other job. It wasn't firing, as they were doing work for me temporarily. I would possibly like recommend.

Q. He would take care of that then, is that right?

A. That is right.

Q. When you came to the Germain Seed and Plant Company to work, I believe you said you started at the rate of \$80 per month?

(Testimony of Kenneth Richard Luck.)

A. Yes.

Q. Did you have any understanding as to increases at the time you came to the Germain Seed Company?

A. Well, I came out here from the middle west where I had been in the seed business for several years, and I had had a [444] considerable knowledge in the business and had done business with some of the firms here. But I didn't know Mr. Meyberg, and when I approached him about a job, he said, naturally, he didn't know me and that what I was telling was probably right. He asked me what I had worked for before, and I told him, but he thought it was more than he could risk at the time and asked me if I could start at \$80.

I said, "Well, I came out to Southern California to work and live, and I will start at eighty, provided I don't stay there. I will have to have more right along." I had been making more. I was in business for myself, as I said, and I had a considerable knowledge of it; I imagine more than nine out of ten employees.

Q. At Germain's?

A. Yes, at Germain's in the seed business, and I knew that I would be worth considerably more than that to the firm.

Q. You had a college education, didn't you?

A. Yes. I graduated from Missouri University, and I also took some horticultural or floricultural

(Testimony of Kenneth Richard Luck.)

work at the University of Southern California, and I told him I thought I was worth considerably more than that, and he said if that was the case, O.K.

Q. Now, going to the question of the preference for Consolidated Union members over non-union members, isn't it a fact that that was one of the problems that was up for dis- [445] cussion at a great many of the union meetings? That is, the question of the company hiring non-union members while there were still Consolidated Seedsmen's Union members unemployed?

A. Yes, that came up right along.

Q. In other words, the company had in a number of instances hired non-union employees when Consolidated Seedsmen's Union members were out of work? Is that correct?

A. Yes, it did.

Q. That happened at the Ranch, and also at the other stores, didn't it?      A. That is right.

Q. (By Mr. Watkins) With respect to members of the Consolidated Seedsmen's Union, there were no members of that union except people who were then or had previously been employed at Germain's; is that correct?

A. That is just about true. I think there were one or two people members of the union who were not in the employ at the time, but had been.

Q. Had been previously? [446]

A. The idea of the union was to incorporate under the State of California, which we did, and



(Testimony of Kenneth Richard Luck.)

we negotiated with several other firms—the employees of several other firms about coming into our membership, but they seemed to think that probably they would be just as well off to organize in their own firm. I think a specific example of that was one firm in Phoenix, or I am not positive just there, some place in Arizona, and two others, one firm here in Los Angeles and one in Ontario, I believe.

Q. In any event, when you sought preferential hiring for members of your union, you were seeking preferential hiring for people who had at one time been employees of the Germain Seed and Plant Company? Correct?      A. That's right.

Q. All right. Now, Mr. Luck, will you go back to the time in August, I believe, of 1937. I believe you testified that you attended a meeting that Mr. Sage held at the plant on or about that time. Do you recall the meeting that I refer to?      A. Yes.

Q. Where Mr. Sage was present and some other employees?      A. That's right, yes.

Q. Were you present at the meeting?

A. Yes.

Q. Now, this was prior to the time that Mr. Voorhees came to the plant? [447]      A. Yes.

Q. Do you remember how many were present at that meeting?

A. Oh, there was a group, I would say, of about twenty. I guess somewhere around there.

Q. How long did the meeting last, if you can recall?

(Testimony of Kenneth Richard Luck.)

A. Oh, half an hour, forty-five minutes.

Q. Was it a meeting in which somebody made a speech, or was it a general discussion meeting?

A. Well, it seemed to culminate from general discussion, and most all of the fellows from the upper floors were down there. It was just—there didn't seem to be any arrangement or any system to it. There were several of the men, Hatfield and Sage and Nesbit, the three I remember; I am not positive whether Mr. Hill was there or not, but he might have been. It was just a general bunch of us sitting around. I think it was after work, either on Saturday afternoon—right after noon. It seemed like it was right after work.

Q. Were there questions asked by different ones present?

A. Yes, we were all asking and answering questions.

Q. In other words, it was more or less of a discussion—

A. That's the idea.

Q. —than a speech-making event?

A. Yes.

Q. Mr. Luck, someone here has testified that at that meeting Mr. Sage made a statement to the effect that Mr. Schoenfeld and [448] Mr. Meyberg had enough money so that they could just close up the plant, if they wanted to. Do you remember Mr. Sage making any such statement?

A. No, I don't remember any specific statement.

(Testimony of Kenneth Richard Luck.)

Redirect Examination

Q. (By Mr. Cobey) Mr. Luck, how were you informed of this meeting as to which you have just been testifying?

A. I think just by word of mouth, just general talking amongst the fellows.

Q. I think you just testified it was more or less a general discussion. Is that correct?

A. That's the idea.

Q. Didn't Mr. Sage make a little speech there? Didn't somebody take the lead?

A. Sage did, yes. He apparently—you see, I had only been with the firm a year possibly, and I didn't know many of [449] the men intimately. I knew who they all were, and Mr. Sage at that time said that he, of course, had been with the firm quite a long while and, apparently, he had held a job—the job that Mr. Hill holds now—and that he had been given a different job, and he said he knew something about the unions, and said that he didn't want to join any. But as far as any notification was concerned, it was just all talk about that, that is all. And they said, "Are you going to be there? We are going to have a bunch of fellows downstairs after work."

And I said, "Sure, I will be there."

Q. But Mr. Sage took the lead at the meeting, didn't he?

A. Yes, I believe so. He apparently had been

(Testimony of Kenneth Richard Luck.)

there as long, if not longer, than most of the other people, and others, I think Mr. Hatfield had quite a little to say. Not a lot. There wasn't a lot said. And Nesbit—there were three or four men who apparently were the leaders, you know, had been there a long time.

Q. (By Trial Examiner Paradise) Just one or two questions, Mr. Luck, about your work in the bulb department. Exactly, what did you do there?

A. Well, you might say everything. In the slack season it was everything from sweeping the floor to keeping the stock [450] and filling the orders, and buying the merchandise that we had to have for re-sale, and everything in general. And then, of course, in the busy time, why, I just took care of the invoices and the buying, and you might say supervision of the two or three other people.

Q. What was the extent of your supervision of the work of these two or three other people?

A. Well, of course, you all realize in any reasonable occupation like the seed industry, it has great periods of fluctuation, and it is hard—I know from having been an owner, in business myself—it is hard to keep employees that know anything and pay them a proper amount of salary and pay to do that, keep them over an entire year. So when you can't do that, for short periods of the time you have a lot of green help in there that don't know one thing from another, don't know anything about

(Testimony of Kenneth Richard Luck.)

it in reality, and you just have to instruct them, "Do this," and "Do that. That is red and blue," and that sort of thing.

Q. Your superior, as I understand it, was Mr. Pieters? Is that right?      A. That is right.

Q. What was his position?

A. He was in charge of the whole floor. He was the buyer and general encyclopedia, and, of course, he did all the hiring and firing. I don't know. As I say, I went to Mr. [451] Meyberg when I was personally hired, but I know Mr. Pieters was personally consulted about it, and I imagine all the other employees on that floor were either hired by Mr. Pieters or Mrs. Coahran. It involves a lot of girls that do packet filling, and while he didn't bother with the intimate hiring and firing of those, he did it——

Q. What was done in the bulb department? What did that department consist of?

A. It consists of, you might say,—of course, it can be divisible in various ways. You might say European merchandise, import goods, which consists of hyacinths, crocuses, tulips, quite an amount of varying items, and then locally grown things like dahlias and the various bulbs that we grow at our Ranch. Of course, some are grown in various places; ranunculus, and that sort of things, and other bulbs like gladiolas that we buy out at various places.

Q. I wasn't interested in a description of the



(Testimony of Kenneth Richard Luck.)

various bulbs. When you say the bulb department, it had to do with the purchase——

A. And dispensation.

Q. —sorting, and crating, and packing——

A. That's right.

Q. —and distribution of bulbs of different kinds?

A. That's right.

Q. What was the maximum number of persons who might be employ- [452] ed there during the busy season?      A. In the bulb department?

Q. Yes.

A. Well, five, I believe, at the most.

Q. That is four besides yourself?

A. Four others, yes.

Q. During the off-seasons there would be how many?      A. No others besides myself.

Q. Just yourself?

A. And I would be looking for something to do.

Q. How long would the busy season last?

A. Well, it depends a lot on the weather, and things like that.

Q. Well, normally.

A. Well, you might say from the 1st of September until just before Christmas, and that would begin again about the middle of January and run until the middle of May, with variations on each side.

Q. Did you have anything to do with the hiring of the help in the bulb department?

(Testimony of **Kenneth Richard Luck.**)

A. No. I didn't have anything to do with the hiring of anyone.

Q. Were you consulted about the hiring of anyone?

A. Not in the actual hiring. I might say in one case I noticed in the minutes there was mention of a Mr. Follingstad, [453] or something like that, who had been employed at the ranch, and in one instance he had been dismissed because of their slack period, and the union brought up the fact that, if possible, he should be hired again, and at that time my department was increasing in its activities, and I was approached, well, couldn't he be used in my department.

I said, sure, he would be as good as anybody else, they generally don't know much anyway.

Q. Aside from that case, was there any case in which you were consulted with reference to the hiring of somebody in your department?

A. No.

Q. How about the question of determining whether additional help should be hired, without reference to any particular person?

A. Well, a particular person—

Q. I say, without reference to any particular person.

A. Well, when business got so that we were working as fast as we could, naturally, and still there was more work accumulating than we could

(Testimony of **Kenneth Richard Luck.**)

get out, I would always go to Mr. Pieters and say I would have to have help. He would say, "O.K."

Q. What would be the situation with regard to the slackening of work and laying off of help? Did you have anything to do with that?

A. Well, I would have, naturally, but, of course, he knew [454] too when the business was beginning to fall off and when we were caught up, and had things in good shape again, why, I would generally tell him, "Well, we are caught up all right." And if he had some place else he could use anybody in my department at any time, why, O.K.

Q. Did you have anything to do with the determination of which employees were to be laid off first when work slackened?      A. No.

Mr. Watkins: Just a moment. I was just wondering if it should not be made clear to the witness: In his capacity, as he said, in the bulb department, or in his capacity as head of the union.

Trial Examiner Paradise: I am not considering your union——

The Witness: Status?

Trial Examiner Paradise: —position or union status at all. Have you understood that?

The Witness: I have thought of both of those sides.

Q. (By Trial Examiner Paradise) In the answers you have given with regard to your work in the department?

(Testimony of Kenneth Richard Luck.)

A. Well, except in this Follingstadt case that came up through the union.

Q. Outside of that, have you answered from the standpoint of your status as the head of the bulb department?      A. Yes, that's right. [455]

Q. Is that a correct designation of you, head of the bulb department?

A. That would be all right.

Q. Now, to re-state the previous question: Have you had anything to do with the selection of persons for lay-off when work slackened?

A. No. So far as my department was concerned, it was more or less minor, and I don't know offhand of any instance when my work was caught up that they were actually laid off. It was transferred to another department, and it didn't make any difference to me. I didn't have anything to say about it, no.

Q. Eventually they would all have to go out of your department anyway?      A. That's right.

Q. There was no question of building up a permanent staff in the bulb department?

A. Well, of course, we always hoped to do something big in our own little way, but it isn't, because it just—when it quits, it is finished, and there is nothing to do.

Trial Examiner Paradise: Oh, I might add just one further question:

Q. Did you ever have any over time work in the bulb department during the busy season? [456]

(Testimony of Kenneth Richard Luck.)

A. I never did. We had a lot of work to do and we wouldn't necessarily have to go home, but we never did any over time work.

Trial Examiner Paradise: All right.

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### BOARD EXHIBIT 34-C

Copied from the minute book of Consolidated Seedsman's Union on April 14, 1941, by Gladys Van Sickle.

### SPECIAL MEETING OF BOARD OF DIRECTORS

A special meeting of the Directors of the Consolidated Seedsmens Union Inc., with Mr. Meyberg was called at 4:00 P.M. Thursday, October Third 1940. All Directors were present.

Mr. Meyberg explained the budget system upon which his business was being run. Each Director with the exception of the Van Nuys Ranch, and Hill Street Store was handed a set of figures showing the possible salary increases in their divisions.

Mr. Meyberg stated that the Hill Street Store was operating at a loss, but that something in the form of a bonus based on the selling ability was being worked out. The Van Nuys Ranch is another branch entirely different being under the Agriculture labor. Mr. Meyberg will arrange to meet with the Ranch within Tuesday of next week. Mr. Meyberg stated Van Nuys has improvement coming up.



(Testimony of Kenneth Richard Luck.)

Mr. Butterfield asked what was to be done about the approaching lay off of Jack Thrift, a member of the Consolidated Seedsmens Union. Mr. Meyberg stated that he was trying to fill him in at the present time, and would see what could be done about keeping him employed.

It is understood that the Board of Directors Will Meet Again with Mr. Meyberg as soon as can be arranged.

/s/ FERN ANITA WINGROVE,  
Acting Secretary.

/s/ JOHN W. BUTTERFIELD,  
President.

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BOARD EXHIBIT 34-D

GERMAIN'S

Germain Seed and Plant Co.  
General Offices and Warehouse  
747 Terminal St. - TRinity 2821  
Los Angeles, Calif.

3d October 1940

To the Board of Directors, Consolidated Seedsmen's Union.

The management of your company has given serious study to your request that we examine the possibilities of making salary increases for various classes of our employees.

(Testimony of Kenneth Richard Luck.)

We have carefully gone over our situation with the thought in mind of making such increases as we feel can be made without jeopardizing the financial structure of our business. We feel that this matter is of as great importance to each employee as it is to your management because after all the livelihood of all of us is definitely dependent on the ability of your company to operate at a profit. If our ability to operate profitably is impaired you will realize that our ability to give employment will also be seriously impaired.

You have been given figures by the writer showing you that during recent years the amount of profit that your company has been able to make has been quite small. In fact, there would have been no profit had it not been for the fact that outside activities not connected directly with the seed business, in which we have engaged, have helped to make up for our generally unsatisfactory profit condition.

It must be remembered that no business can continue operating without a profit. When profits cease, either expenses must be reduced or operations must be discontinued.

In suggesting the attached schedules of revised salaries we have attempted, so far as possible, to be consistent in classifying different classes of work in our organization so that generally employees performing the same class of work, or work of equal

(Testimony of Kenneth Richard Luck.)

importance and responsibility will receive the same compensation.

We have estimated that the increases in compensation represented by the attached lists, represent a total increase of approximately \$6500.00 per year. In addition we are now about to operate on a 40 hour week which will also result in an increase in our expense. We are hopeful that we can overcome these additional costs, and are counting to no little extent on the loyalty and cooperation of all of our employees to accomplish this.

Sincerely yours,

MANFRED MEYBERG,

Pres.,

Germain Seed & Plant Co.

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Copy

BOARD EXHIBIT 34-E

Copied from minute book of Consolidated Seedsman's Union. Proofread by Gladys Van Sickle, April 17, 1941.

SPECIAL MEETING  
BOARD OF DIRECTORS

A special meeting of the Directors of the Consolidated Seedsmen's Union Inc., with Mr. Meyberg was called at 2:00 P.M. Tuesday, October 8th, 1940. All Directors were present.

Mr. Meyberg asked for a report from each divi-

(Testimony of Kenneth Richard Luck.)

sion as to whether they accepted their salary increases as outlined by him.

Miss Wingrove reported the office accepted, but pointed out that three of their members were entitled to more of a raise in order to bring up the lower salaries they were receiving. Mr. Meyberg stated that Miss Hanna was doing routine office work that could be replaced at her same salary. Mrs. Slee was the extra girl in the Billing Department and that Miss Thomas was recently hired on the order desk. Mr. Meyberg wishes the expense of the office to remain as is.

Mr. Kayes reported the Ranch accepted, but Mr. Stearn and Mr. Wilford wished more of a raise. Mr. Meyberg stated that Mr. Stearn was more or less responsible for business at the Ranch and that it would take more business to have more pay. Mr. Meyberg will talk with Mr. Wilford.

Mrs. Anderson reported the 3rd Floor accepted, but Mr. Bushing a jack of all trades was not satisfied at receiving the same raise as Neal working in the bulbs. Mr. Meyberg stated that Neal has a better knowledge of bulbs and will talk to Mr. Bushing.

Miss Sievers reported Hill St. Store accepted. They are on their own, with a base wage and a percentage of their increase over their sales of last year. They are also to share in a percentage of sales increase for the entire store over last year if any.

(Testimony of Kenneth Richard Luck.)

Mr. Hook reports accepted with the following complaints—Mr. Otto Witt wished more. Mr. Meyberg stated he raised his pay as a kindness so he would be getting an increase along with the others, not that his work warranted more money. He is at the retiring age.

Ed Casey says good sack sewers next door receive \$110.00 per month. Mr. Hook stated Mr. Casey a good steady worker. Mr. Meyberg will talk with Mr. Casey. Mrs. Otto only received a \$2.50 raise this time and that with her \$2.50 last time brings her to \$75.00 per month the same as the girls around her. She fills packages and keeps stock. Mr. Meyberg will not pay more. Mrs. Cook is not satisfied; feels she has more responsibility than the girls working with her. Mr. Meyberg will talk with her. Pat Chavez is not satisfied. Mr. Meyberg stated his work is routine.

Mr. Butterfield asked why the new men received the same money as the older employees. Mr. Meyberg stated that it was a classification of jobs, that the new men receive the same money but will be the first to be laid off.

Mr. Meyberg will meet with Hill St. Store next Monday and explain the percentage system to them more fully.

(s) FERN ANITA WINGROVE

Acting Secretary

(s) JOHN W. BUTTERFIELD

President



JOHN W. BUTTERFIELD,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [457]

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: John W. Butterfield, 1327 West 75th Street, Los Angeles, California.

Q. (By Mr. Cobey) Mr. Butterfield, you are employed at Germain's, are you not?

A. Yes, sir.

Q. How long have you been employed?

A. Well, I have been employed off and on there for about fourteen years. I would say about six years this last time.

Q. Six years this last time. What have you been doing there since August and September of 1937?

A. Since August, 1937, well, I have done various things at different times. I have worked in the warehouse. Then I was transferred to the retail store at Sixth and Hill. Then there was an opening on the fourth floor in the wholesale, and they transferred me back down there, and that was just more or less filling orders and like that on the fourth floor.

Q. Of the warehouse?

A. Of the warehouse, yes. That is until recently. I have been outside for the last three weeks.

(Testimony of John W. Butterfield.)

Q. What do you mean by "being outside"?

A. Out on the road selling.

Q. A salesman? [458]

A. A salesman, yes, sir.

Q. Now, can you tell me whether or not you held any office in the Consolidated Seedsmen's Union prior to September 23rd of 1940?

A. September 23rd, of 1940?

Q. For the purpose of refreshing your recollection, I think that is the date on which you accepted the presidency or was made president.

A. September 23rd, when I was elected president, yes, until April 1st. [459]

Q. This year? A. Yes.

Q. And did you hold any other office?

A. Prior to that time I was a director for one term, just a year.

Q. Director of what division?

A. Of the fourth, fifth and sixth floors.

Q. Of the warehouse?

A. Yes, of the warehouse.

Q. (By Mr. Cobey) I see. I show you Board's Exhibit 6, Mr. Butterfield, and I call your attention to the fact that on Board's Exhibit 6, which is the chart of the officers of the Consolidated Seedsmen's Union—— A. Yes.

Q. ——that Francis Wall, Junior, is listed as director for the fourth, fifth and sixth floors from February of 1939 to [460] July of 1940.

A. That's right. Wall was. I finished his unfinished term.

(Testimony of John W. Butterfield.)

Q. You finished his unfinished term?

A. That's right; Wall was.

Q. Do you remember when you came in office and when you went out?

A. No, I don't remember what date that was, Mr. Cobey.

Q. But it was some time prior to——

A. It was some time prior to this——

Q. ——to the end of his term, July, 1940?

A. To the end of his term. I don't think it was very long.

Q. And that is the only office you held in the Consolidated Seedsmen's Union——

A. That is the only office.

Q. ——until you became president, prior to September 23, 1940?      A. That's right. [461]

Q. I call your attention to the fact that Board's Exhibit 35-B refers to a motion——

Mr. Watkins: Just a moment, Mr. Cobey. Those are not in evidence yet.

Q. (By Mr. Cobey) (Continuing) ——for identification, refers to the securing of new membership cards?      A. That's right.

Q. Were such cards secured?

A. I believe so, yes. [462]

Q. (By Mr. Cobey) Mr. Butterfield, I think that during your term of office as president there were certain negotiations in regard to the obtaining of a closed shop, were there not?

A. Yes, sir.

(Testimony of John W. Butterfield.)

Q. Can you state, very briefly, the substance of what transpired in that connection while you were president?

A. Well, I don't know whether I can relate it from start to finish, but I do know that there has been a contract drawn up and presented to Mr. Voorhees to present to the company for the union. That was done. From there on it is Mr. Hook's problem. My term as president ran out and he was elected as president in my place.

Q. I see.

A. (Continuing) But that was done with the sanction of the union. That was done at the open meeting, and they voted they wanted a closed shop, and I felt it was my duty to push it through, which I think I did, that is, the drawing up of the contract end. Now, what Mr. Voorhees has done with it, I couldn't tell you.

Q. Now, Mr. Butterfield, calling your attention to the period of September, 1940, do you recall whether or not at [463] that time you prepared a petition for a wage increase?

A. September, 1940? That would be this last September?

Q. Yes.

A. There was a petition, if I remember right, from the wholesale division of the different floors, what the boys wanted, and that petition was presented to Mr. Meyberg.

Q. There was only one petition in existence?

(Testimony of John W. Butterfield.)

A. I believe there was three; if I remember right, there was three.

Q. Three petitions. Can you tell us who drew up and circulated the various petitions?

A. I think it was just a slip of paper passed around and the boys signed and put down what they wanted. If I remember right, I believe that is the way it was.

Q. Can you place the time when those petitions were drawn up and circulated?

A. You mean, there was supposed to be a dead line when they were supposed to be signed? Is that what you mean?

Q. No. I mean, can you state more exactly the time during which they were prepared and circulated?

A. Well, any time they could catch a particular party, they would have them sign it—they would have him sign it. That is all I can tell you.

Q. Well, let me ask you this: There has been testimony here to the effect that, I think it was around September 3rd [464] or 4th or 5th, of 1940, a meeting was held with Mr. Meyberg in his office, at which several of the employees were present, just after quitting time. Do you recall any such meeting?

A. September 3rd or 4th?

Q. Yes. A. In the early part.

Q. There has also been testimony to the effect that a dinner was held at the Terminal Club.



(Testimony of John W. Butterfield.)

A. Yes.

Q. And after that dinner a meeting was also held in the office?

A. Yes. I was at that dinner.

Q. You were at that dinner? A. Yes.

Q. And were you at the meeting afterwards?

A. Yes.

Q. Were any of these petitions presented at that time?

A. When this petition was first drawn up, it was during the term of Stanley Watson, if I remember correctly, and it seems those petitions were presented to Mr. Meyberg, and when his back was turned, those petitions were taken off his desk. The date of that I don't remember.

Q. Those were presented at the meeting after the dinner at the Terminal Club; is that correct?

A. I believe it was. I believe they was. When they was [465] presented, I didn't follow that through very closely, and I believe—I believe that is when they were presented, either presented to him the night of the meeting, or there was a meeting one night after work, I don't know what date it was, when all the employees went down there, and I believe that is when the petitions were presented. And then he made arrangements for the dinner a night or two after that, if I remember right.

Q. So it is your recollection that all of the petitions were presented at this first meeting as to which you have testified?

(Testimony of John W. Butterfield.)

A. They were, yes. And then, as I say, when his back was turned somebody had taken them off his desk. That I don't know anything about, who did it, or how.

Q. Now, do you know how many petitions were presented at that time?

A. I believe there was two petitions presented at that time, and one of the two was taken off of his desk.

Q. The other one was left there?

A. The other one, I believe, was left there.

Q. Can you state the substance of either of those petitions?

A. Well, it was for an increase in pay more than anything else. Everybody was dissatisfied with the pay they were receiving, and they wanted more. Some of the boys wanted a \$20 raise, some \$25, like that. [466]

Q. Can you tell me whether or not one was for a ten per cent increase?

A. Yes, that's right.

Q. And the other was for a greater increase?

A. Yes. As I remember, there was some that wanted ten per cent and some put down specific what they wanted.

Q. Did you have anything to do with the getting up of the petition or circulation—first, which one did you sign?

A. The ten per cent.

(Testimony of John W. Butterfield.)

Q. Do you happen to know who drew up either of the petitions?

A. As far as drawing them up, I don't think anybody exactly did. It was that some wanted one thing, and they were given these slips, you know, and they would specify it there.

Q. The slips were passed around?

A. They were passed around, and they signed whichever they wanted to.

Q. I think you testified that at this first meeting they were both presented, and then one of them was taken off the desk and the other one was left there; is that right?      A. Yes.

Q. Do you know whether or not the one that was taken off the desk was ever presented to the management?

A. That I couldn't say, because I had nothing to do with it at that time.

Q. What action was taken on the one that was left on the [467] desk?

A. That was up to Mr. Watson. He was their president of the union at that time.

Q. After you became president on September 23, 1940, do you recall whether or not you took any action in respect to those petitions?

A. Yes, I did. I think that, if I remember correctly, that everybody received a wage increase, and put everybody on the same level of wages. In fact, I know he did, because we were presented with copies of the payroll, and that was shown to every-

(Testimony of John W. Butterfield.)

body, so that they would be satisfied, so that I wouldn't be making more than John Jones or he wouldn't be making more than I was, in other words.

Q. That pay increase was made on October 4th, after your meeting? When I say "your meeting," I mean the meeting of the board of directors?

A. I believe it was dated October 4th, but it dated back to September.

Q. To September 15th?

A. Whenever this was to go in effect. I believe that was correct.

Q. Is it your recollection that that pay increase was made on October 4th? Is that right?

A. It was made on the 4th of October as of September 15th.

Q. Mr. Butterfield, do you happen to know whether or not [468] that contract that you referred to, that was drawn up by Mr. Voorhees, covered working conditions generally in addition to the closed shop?

A. Yes, it did; the hours and like that. Yes, it did.

Q. Now, during your term of office did Germain's grant to you—and when I say "grant to you," I mean grant to the Consolidated Seedsmen's Union all the demands that the union made?

A. No, I wouldn't say all of them.

Q. Well, did the union at any time threaten to

(Testimony of John W. Butterfield.)

resort to a strike or boycott, or any type of economic action in the event their demands were not granted?

A. No, sir. [469]

Q. (By Trial Examiner Paradise) I have glanced through the minute book here and I find in the minutes of the meeting of February 5, 1941, at the home of Jack Butterfield, which I presume is you,—

A. Yes.

Q. —this statement:

“It was also decided that in the interests of the union in general, that it would be best to have any and all letters dictated by Meyberg concerning said union be dictated to a secretary holding union membership.” [470]

Yes.

Mr. Cobey: May I interrupt you, Mr. Examiner? That is in evidence, you know.

Trial Examiner Paradise: Oh, that is, yes.

Q. (By Trial Examiner Paradise) Referring to Board's Exhibit 35-A, what is the background of that discussion? How did it happen to come up?

A. Well, it seems like he was dictating letters, or anything, to—I don't know just how to answer you—I think it refers to—it may be worded wrong there—that if we, the board of directors, I mean, presented to Mr. Meyberg anything that was wanted, then generally he answered that by letter, and we wanted that letter written by a secretary or a person that was a member, and not a non-union member. That is what we were getting at.



(Testimony of John W. Butterfield.)

Q. Was his secretary a non-union member?

A. Yes, I believe she was. Mr. Meyberg's secretary was a non-union member, and we wanted him to dictate that letter to a member. [471]

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JACK THRIFT,

a witness called by and on behalf of the National Labor Relations Board having been duly sworn, was examined and testified [475] as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Jack Thrift, T-h-r-i-f-t.

Trial Examiner Paradise: Your address?

The Witness: 334½ South McBride, Los Angeles.

Mr. Cobey: May we go off the record for a moment?

Trial Examiner Paradise: Off the record.

(Discussion off the record.)

Trial Examiner Paradise: On the record.

Q. (By Mr. Cobey) Mr. Thrift, you work down at Germain's? A. Yes.

Q. How long have you worked there?

A. I have been there about fourteen months now.

Q. What do you do down there?

(Testimony of Jack Thrift.)

A. Truck driver.

Q. Have you been a truck driver the entire time you have been there?      A. Yes.

Q. Are you a member of the Consolidated Seedsmen's Union?      A. Yes.

Q. When did you join that organization?

A. Well, it was about the 8th of September, of last year.

Q. Were you asked to join? [476]

A. Yes.

Q. Who asked you to join?

A. Bill Epperson.

Q. Can you tell us when and where that request was made?

A. Well, this took place about the 5th of September, 4th or 5th, along in there. Bill Epperson asked me on the shipping floor if I didn't want to join the Consolidated Seedsmen's Union, and Mr. Stanley Watson was present. I told him, "Yes, I would like to."

So he said, "I will get you an application card." The following day he gave me the card, and I filled it out and I turned it in. I was passed on. In fact, the 13th of September was the first meeting I attended.

Q. And you thereafter paid dues into the organization, is that right? That is, paid dues to the Consolidated Seedsmen's Union?      A. Yes.

Q. Can you tell us how the dues were collected?

(Testimony of Jack Thrift.)

A. Bill Epperson always collected any dues on the shipping floor.

Q. That was during working hours?

A. Yes, in the morning, about 9:00 o'clock. [477]

Q. (By Mr. Cobey) Now, Mr. Thrift, calling your attention to the first part of October, 1940, can you state whether or not during that period you had any conversations with Mr. Hill?

A. Yes. It was right around the 10th of October that Mr. Hill approached me.

Q. Will you state where that conversation occurred? A. Yes, on the shipping floor.

Q. What time of day was it? [491]

A. Around 9:30 in the morning.

Q. Who else was present besides yourself and Mr. Hill? A. No one.

Mr. Watkins: When was this?

Mr. Cobey: October 10, 1940. Is that correct?

The Witness: That is approximate. I wouldn't give that date to be exact, but that is just about the date it was.

Q. (By Mr. Cobey) Now, will you tell us what was said in this conversation that you had with Mr. Hill?

A. Well, as I say, Mr. Hill approached me there on the shipping floor, as I was loading my truck.

Mr. Watkins: Just a minute. I move the portion of his answer, that Mr. Hill approached him, be stricken as a conclusion of the witness. Let him describe what happened.

(Testimony of Jack Thrift.)

Trial Examiner Paradise: Motion denied. Go ahead.

The Witness: Mr. Hill came up and asked me if I belonged to the union. Naturally, I took it to be the A. F. of L., as that is the only union he would talk about, and I asked him, I says, "Well, why?" I says, "Isn't my work satisfactory here?"

He says, "Yes." He says, "Your work is all right, but I want to know whether or not you belong to the union or intend to join."

I told him then that I belonged to the A. F. of L., in fact, I had joined some four months previous to my employment [492] there.

And he says, "Well, that makes it sort of bad, Jack, because I intended to keep you on here." And he said, "Now, I don't know what to do about it."

And then he said, "Well," he said, "this is, to my notion, the A. F. of L. and the C. I. O., all these unions, are a bunch of leeches," he said, they feed off of the—— [493]

The Witness: (Continuing) Well, he said, "They feed off of the efforts of others." He said, "You belong to the C.S.U., as well," and he said, "they are taking care of you here, whereas the dues you are paying into the A. F. of L. is doing you no good."

He then asked me something about if I couldn't get a withdrawal card. I told him that I could, but I would rather remain an active member and keep my monthly dues paid up.

(Testimony of Jack Thrift.)

That's just about all of that. Oh, just a minute, There is something here about (referring to paper)—he did say also—he said, “We don't want the A. F. of L. in here or any other union.” That is just about all that he told me in that conversation.

Mr. Cobey: Would you like to see the notes to which the witness referred?

Mr. Watkins: Yes, I would, if he was refreshing his recollection from something.

The Witness: It is all on one page there.

(Handing document to counsel.)

Q. (By Mr. Cobey) Is this (indicating) the part you referred to?      A. Yes.

(The documents referred to were handed to Mr. Watkins.)

Trial Examiner Paradise: Let the record show that Board's [495] counsel has handed to respondent's counsel certain papers which the witness used in refreshing his recollection during the course of his testimony.

All right, proceed.

Q. (By Mr. Cobey) Mr. Thrift, do you recall any other conversations with Mr. Hill in regard to unions during this same period?

A. No. That's about the only one that I had.

[496]

Q. Now, Mr. Thrift, in the course of your testimony you have referred to certain notes to refresh your recollection. Can you tell us whether those



(Testimony of Jack Thrift.)

notes you have referred to—first, who prepared them?     A. I wrote them myself.

Q. Can you tell us when you wrote them?

A. Well, not the exact date, but I wrote these notes out just before the—I come up the National Labor Relations Board.

Q. And when was that?

A. Well, this is—I don't know. It was about four months ago, when they first brought this case up.

Q. Was that in November, 1940?

A. It must have been about that far back. I don't know if it was November or not, but I know it was several months ago. [504]

Q. Of what union are you a member, besides the Consolidated Seedsmen's Union?

A. Local 208, Teamsters, Chauffeurs & Truck Drivers.

Q. That is known as the Truck Drivers Local?

A. Yes.

Q. And I believe you testified you were a member of that before you were employed at Germain's?

[506]

A. Yes, sir.

Q. Did you or did you not wear your A. F. of L. button when you were employed at Germain's?

A. Well, that could be answered both ways. I didn't wear my button when I first started to work there.

(Testimony of Jack Thrift.)

Q. When did you commence wearing your button?

A. I commenced wearing my button, I would say, along about the 1st of September.

Q. That is the first time you started wearing your button?      A. Yes.

Mr. Watkins: 1940?

The Witness: Yes.

Q. (By Mr. Cobey) Calling your attention to some time around September 20, 1940, Mr. Thrift, do you remember any conversation with Mr. Frauenberger at that time?      A. Yes, I do.

Q. Will you state what time of day it occurred?

A. Well, as near as I can remember, it was in the morning, before I loaded out. It must have been around——

Q. Where did it occur?

A. On the shipping floor there.

Q. Who was there?

A. Well, there was Johnny Epperson, Harold Frauenberger and myself.

Q. All right. Will you tell us what was said?

[507]

A. Harold Frauenberger was talking to Johnny Epperson, that is, he—Johnny Epperson walked up and Harold said, “What? You too?” and I didn’t know what to make of it at first, and then I noticed he was looking at his union button, and——

Q. Which union button?

(Testimony of Jack Thrift.)

A. The A. F. of L. Union button Johnny was wearing at the time.

And Johnny says, "Yes." He says, "When are you going to join?" something to that effect, "when are you going to join the A. F. of L.?"

Harold says, "Well, I don't know about that." And Johnny says something about, "Well, you might as well join now as to join later, regardless," or something to that effect and that was about all that was said on that.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Thrift, you started to work for Germain's on what date?

A. May the 12th, of last year.

Q. 1940? A. Yes. [508]

Q. When you went to work, did the people who employed you there ask you about your union affiliation? A. No.

Q. You filled out an application blank, did you not? A. I don't quite understand you.

Q. Well, did you make out an application for employment, a blank for employment?

A. No.

Q. You did not? A. No.

Q. But no question was asked you about your union affiliation? A. No.

Q. How soon after you started to work there were you approached by anybody to belong to the Consolidated Seedsmen's Union?

(Testimony of Jack Thrift.)

A. How long after?

Q. Yes.

A. Well, I would say I was there right around, close to six months.

Q. Before anyone asked you to belong to the Consolidated Seedsmen's Union? A. Yes.

Q. All right. Now, I believe you testified that you first started wearing your A. F. of L. button some time in September of 1940. Right? [509]

A. Yes.

Q. And you gave a specific date. What was it?

A. I don't think I gave a specific date on it.

Q. Can you now fix a specific date in September when you started to wear it?

A. No, not to the date.

Q. How do you know it was in September?

A. How do I know it was in September? For the reason that it was the time some of the warehousemen joined. In fact, I think September 5th was the day that many of them joined, and I started wearing my button just about the same time.

Q. From that time on there were quite a few buttons around the plant, were there not?

A. Yes.

Q. Then you wore your button consistently from that point on? A. Yes.

Q. Under whom do you work?

A. Mr. Hill.

Q. Directly under Mr. Hill? A. Yes.

(Testimony of Jack Thrift.)

Q. Did you see him every day?

A. Well, almost every day.

Q. Now, then, when was the first conversation you had with Mr. Hill, that you were relating here, which took place at [510] about 9:30 o'clock? Was it on October 10, 1940?           A. Yes.

Q. And who was present at that conversation?

A. Just Mr. Hill and I.

Q. Who started the conversation?

A. Mr. Hill.

Q. What did he say to you? The first thing?

A. The first thing?

Q. Yes.

A. The first thing he asked is, "Do you belong to the union?"

Q. Was that all he said?

A. Yes. Well, he says——

Q. Just a minute. Was that all he said to you at that time?

A. That is how he started the conversation.

Q. Did you make an answer to that?

A. I didn't come out and say "Yes," or "No."

Q. Well, what did you say? [511]

A. I said, "What is the matter?" I said to Mr. Hill, "Isn't my work satisfactory?"

Q. All right. Was that all you said to Mr. Hill at that time?           A. Yes.

Q. Then what did he say?

A. He said, "Yes." He answered my question. Then he says, "Yes, your work is all right."



(Testimony of Jack Thrift.)

Do you want me to go on from there?

Q. Now, is that all he said? Just relate specifically the conversation that took place at that time, without your thoughts about it.

A. Yes, that is the way it started.

Q. What else was said by you next or by him?

A. Well, I told Mr. Hill, I says, "Why? Isn't my work satisfactory?"

He says, "Yes." He said "Your work is all right."

Do you want me to go on?

Trial Examiner Paradise: Go ahead.

Q. (By Mr. Watkins) What was the next thing that was said by anybody?

A. He said, "Your work is all right, but I just want to know whether or not you belong to the union or intend to join." He did put it that way, "or if you intend to join." I don't [512] know why he said that.

Q. What did you say?

A. Then I told him, I answered him. I said, "Yes, I belong to the union," and I said, "I joined the union before I come here to work."

Q. Then did he say anything more?

A. Oh, yes.

Q. What did he say next, after you told him that?

A. Well, he said, "That makes it bad, Jack, because I intended to keep you on here, but now," he says, "I don't know what to do about it." He

(Testimony of Jack Thrift.)

says, "I don't know whether to keep you on here or not."

Q. All right. What did you say?

A. Well, I didn't answer him. Then he went on——

Q. Well, what else did he say then?

The Witness: He says, "This union is a bunch of leeches who feed off of the efforts of others."

Q. (By Mr. Watkins) Did he say which union he was talking about? [513] A. No.

Q. He just said "this union"? A. Yes.

Q. (By Mr. Watkins) Did he or did he not mention any specific union?

A. No, he didn't say "A. F. of L.," or nothing. He just said, "this union."

Q. All right. What was said after that?

A. Well, after that he said that—oh, he said that—he said, "What you are doing is paying dues into the A. F. of L." That is when he mentioned the A. F. of L.

Q. This is the first time he mentioned the A. F. of L.?

A. Yes. He says, "What you are doing is paying dues into the A. F. of L., which is doing you no good at this time, and the dues that you are paying into the Consolidated Seedsmen's Union are the ones that are helping you out."

Q. Did he say during this conversation that that was the first time that he had known that you were an A. F. of L.? A. No.

(Testimony of Jack Thrift.)

Q. Didn't you so testify on your direct examination? [514]           A. I don't quite get you.

Q. Well, didn't you testify on your direct examination that that meeting on October 10, 1940, was the first time Mr. Hill knew you were a member of the A. F. of L.?

A. Well, I wouldn't say that is the first time he knew I was a member of the A. F. of L., when he asked me. He might have known at some other time, through calling the union hall or through getting the information from Mr. Stanley Watson. I think Mr. Stanley Watson knew I was affiliated with the A. F. of L. at the time.

Q. Didn't you wear your button?

A. I didn't wear my button, as I say, until right around September.

Q. Well, this was October 10, 1940?

A. Oh, yes, I was wearing my button then at that time.

Q. Hadn't he seen your button?           A. Yes.

Q. Then why do you think he asked you the question he did?           A. I don't know.

Q. Doesn't that sound strange to you? Didn't you say, "Well, why do you ask me that? You have seen my button before this time?"

A. I have no reason to know he didn't notice me wearing the button.

Q. He hadn't noticed anybody else wearing the button? [515]

(Testimony of Jack Thrift.)

A. I wouldn't say that. I wouldn't say he hadn't noticed it. [516]

Q. Did you go to Mr. Meyberg and ask him if he would keep you on, because you had a wife and child?

A. Yes, I did go to Mr. Meyberg.

Q. When was that?

A. Well, that was some time in October, as I say.

Q. That was before this conversation with Mr. Hill, wasn't it, of October 10th, that you have related?

A. I am not sure of that.

Q. Well, have you got any notes that will refresh your recollection?

A. Yes, I have the notes here.

Q. As to the date on which you talked to Mr. Meyberg?

A. I think I have the definite date here. (Referring to paper.) Oh, yes.

Q. What date was it on which you talked to Mr. Meyberg?

A. The date I have here is October 2nd that I was told I was to get laid off——

Q. Now, just a minute. I don't want you to ramble on. I just want to know the date you talked to Mr. Meyberg.

A. The date I talked to Mr. Meyberg was October 3rd.

Q. 1940? A. Yes. [517]

Q. That is all. Just one other question, please. Mr. Meyberg told you, under the circumstances, he would keep you on as long as he could, did he not?

(Testimony of Jack Thrift.)

A. No.

Q. What did he tell you?

A. He said, "Well, you go on back to work and I will see Mr. Hill, and we will see if we can work something out." [518]

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JOHN R. EPPERSON,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: John R. Epperson, 5107 Clara Street, in Bell.

Q. (By Mr. Cobey) Mr. Epperson, you work down at Germain's, don't you? A. Yes, sir.

Q. How long have you worked there?

A. Since January, 1940.

Q. What do you do down there?

A. I am on the elevator, freight elevator.

Q. You have had that job since you have been down there?

A. Except the first three or four weeks.

Q. Are you a member of the Consolidated Seedsmen's Union? A. Yes, sir.

Q. When did you join that organization? [522]



(Testimony of John R. Epperson.)

A. Well, it was a little less than three months after I went there. It would be along between the 15th and last of April, I would say.

Q. Who asked you to join?

A. Bill Epperson.

Q. Where and when did he ask you to join?

Trial Examiner Paradise: Is he your brother?

The Witness: Cousin.

Trial Examiner Paradise: Cousin?

The Witness: Why, he asked me on the shipping floor, oh, it was along the middle of the morning. I don't remember the date.

Q. (By Mr. Cobey) Can you place the month, approximately?

A. Well, as I say, between the 15th and the last of April.

Q. I see. Was anyone else present, that you recall?

A. I can't say that there was. It was right in front of Mr. Hill's office, but I can't say that there was anyone heard it.

Q. Now, Mr. Epperson, from that time on you paid dues to the Consolidated Seedsmen's Union?

A. Yes.

Q. How were those dues collected from you?

A. Well, the first three or four months Frank Miller collected them, usually right at his desk in the shipping office, and then one month, the month of October, Howard Tabor collected [523] them on

(Testimony of John R. Epperson.)

the shipping floor, and then the rest of the time Bill Epperson has collected them wherever I happened to meet him, usually around the elevator.

Q. These collections have been made during working hours?      A. Yes.

Q. (By Mr. Cobey) Mr. Epperson, are you a member of a union affiliated with the American Federation of Labor?      A. Yes, sir.

Q. Do you recall when you paid your initiation fee?      A. September 11th, 1940. [524]

Q. (By Mr. Cobey) Mr. Epperson, I think you testified that you had a conversation with Mr. Frauenberger—      A. Yes.

Q. ———some time around September 20th?

A. The 21st, to be exact.

Q. The 21st, to be exact. 1940?      A. Yes.

Q. Can you tell us what time of day that conversation occurred?

A. Well, it was early in the morning, shortly after we went to work.

Q. Who was there?

A. Well, there was several around on the shipping floor, but Jack happened to be the only one that was in hearing distance.

Q. Now, will you tell us what was said?

A. Yes. I walked out off the elevator. Well, in fact, I pushed a lot of stuff out to the shipping department, and Harold was there, and looked around at me, and I had the union button on, and

(Testimony of John R. Epperson.)

he looked at the button and he said, "What, you too?"

I said, "Yes." I said, "When are you going to get yours?"

He said, "Oh, I don't know."

I said, "Eventually, why not now?" [530]

Q. Now, I think you were in the hearing room this morning, were you not, Mr. Epperson?

A. Yes, sir.

Q. You heard certain testimony in regard to certain petitions for wage increases that were circulated?

A. Yes.

Q. During the month of September, 1940?

A. Yes, sir.

Q. Did you sign any of those petitions?

A. Yes.

Q. Which petition did you sign?

A. The one for \$110 a month.

Q. Do you know who drew that petition up?

A. I am not positive of who wrote the petition up.

Q. Who brought it to you? A. Al Hook.

Q. Was that during working hours?

A. Yes, sir.

Q. Now, do you recall when those petitions or when that petition you signed was submitted to the management? [531]

The Witness: Well, I know when it was placed on Mr. Meyberg's desk, but it disappeared. [532]

(Testimony of John R. Epperson.)

Q. (By Mr. Cobey) When was it placed on Mr. Meyberg's desk?

A. Well, I don't know the exact date, but it was in the afternoon after working hours in Mr. Meyberg's office. Jack Butterfield laid it on Mr. Meyberg's desk.

Q. Can you tell us whether or not that was prior to the dinner at the Terminal Club?

A. Yes, it was the week before.

Q. You just testified that the petition that you signed was submitted by Jack Butterfield at this meeting. Were any other petitions submitted at that time?

A. Yes, there was two.

Q. Two others or one other?

A. One other that I saw him put on the desk.

Q. Did you ever see that other petition?

A. No, I didn't see the actual petition.

#### Cross Examination

Q. (By Mr. Watkins) Mr. Watson is a member of the A. F. of L., is he not?

A. Yes.

Q. What is his first name?

A. Stanley

[533]

Q. Stanley Watson. He joined at the same time the rest of you men did, around September?

A. No. He belonged before I went to work at Germain's.

Q. And he still belongs, the same as you do?

A. Yes, but to a different local than what I do.

Q. But it is still the A. F. of L.?

A. Yes.

## ROY YOAKUM,

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

## Direct Examination

Trial Examiner Paradise: Is this the witness who was previously on the stand?

Mr. Cobey: Yes. He has been sworn.

Trial Examiner Paradise: All right. Roy Yoakum recalled. Be seated. [534]

Q. (By Mr. Cobey) Mr. Yoakum, you recall the last time that Allan Hook collected dues from you?

A. Yes.

Q. Can you place about when that occurred?

A. Just before Emily Lilly was representative and started collecting the dues.

Q. That was last summer?

A. I don't remember just when that was.

Q. It was last year? A. Yes.

Q. Now, can you tell me anybody else who was present when those dues were collected?

A. Yes. Mr. Gates was.

Q. They were collected in the presence of Mr. Gates? A. Yes, sir.

Q. Now, Mr. Yoakum, can you tell me whether or not Mr. Gates and Mr. Hill ever worked with the bull gang?

A. Yes, sir, they do, in lifting sacks and there is nobody there. For instance, if I am lifting a sack



(Testimony of Roy Yoakum.)

by myself and they come along, they will help me pile the sack.

Q. Do they ever work with the bull gang on any other occasion?

A. Not only in just that way.

Mr. Cobey: That is all.

Mr. Watkins: No questions.

Q. (By Trial Examiner Paradise) Was this one occasion when [535] Mr. Hook collected dues from you in the presence of Mr. Gates?

A. Just one time, yes, sir.

Mr. Watkins: Just a minute.

#### Cross Examination

Q. (By Mr. Watkins) How far was Mr. Gates away from you?

A. Well, he was about two feet.

Q. What time of day was it?

A. It was about 10:00 o'clock.

Q. 10:00 o'clock in the morning?

A. Yes, sir.

Mr. Watkins: That is all.

#### Redirect Examination

Q. (By Mr. Cobey) Where was it?

A. Just in front of Mr. Gates' office door on the fifth floor.

Q. Of the warehouse?           A. Yes, sir.

#### Recross Examination

Q. (By Mr. Watkins) How did you happen to remember that?

(Testimony of Roy Yoakum.)

A. Well, I had went into the sack room to get some sacks to fill with seed, and Mr. Hook met me there and collected the dues, and while he was collecting the dues, Mr. Gates came around and started to go in his office.

Q. Is that all there was to it?

A. Well, he told Hook to not be collecting dues any more while [536] we were working, we didn't have time for that.

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RALPH WOOLPERT,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Ralph Woolpert, 1139 North Ontario, Burbank.

Trial Examiner Paradise: 1139—

The Witness: North Ontario, Burbank.

Q. (By Mr. Cobey) California?

A. California.

Q. Mr. Woolpert, what is your occupation?

A. Assistant business representative of the Grocery Warehousemen's Union, 595, A. F. L.

Q. How long have you held that position?

A. Two years the 10th of next month. [537]

CHARLES J. LOY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Paradise: State your name and address, please.

The Witness: Charles J. Loy, 313 West 74th Street, Los Angeles.

Q. (By Mr. Cobey) California?

A. California.

Q. Mr. Loy, can you state whether or not you were ever employed by Germain's?

A. Yes, I was.

Q. Can you state the period of your employment?

A. Just about the middle of February until about October 15th, of 1940.

Q. Where did you work while you were at Germain's?

A. I started the first day in the office downstairs on the [541] shipping floor tubes, I guess they call it, and the second day I went to the fourth floor and I worked there the rest of the time.

Q. Now, who was working with you on the fourth floor?

A. Mr. Nesbit—oh, Mr. Nesbit, Mr. Hulphers, one other fellow that was quitting in about a week's time for another job, and Jack Butterfield.

(Testimony of Charles J. Loy.)

Q. Did Mr. Stone work with you there at all?

A. Not at that time, when I first went up there.

Q. Under whose supervision did you work?

A. Mr. Nesbit.

Q. Who gave you your assignments of work?

A. Mr. Nesbit.

Q. What rate of pay did you receive?

A. \$75 a month. That is, of course, at the time I went to work.

Q. Yes. Were you raised?

A. Yes. I went to Mr. Meyberg, oh, I guess I was there about two months. I went down and I asked him for a raise, and I believe about two or three weeks later I got a \$5 raise which made it \$80 a month, and then later on I got another one.

Q. When did you get that?

A. Mr. Hulphers and—well, in fact, the whole gang of boys in the bull gang, we all started talking about—they started talking about money and—

[542]

Q. No, I just want to know when you got that other raise.

A. Oh, I think that was about—I think that went into effect about October 4th.

Q. 1940?           A. 1940.

Q. And that raise was to what?

A. To \$100 a month.

Q. Now, Mr. Loy, were you ever asked to join the Consolidated Seedsmen's Union?

(Testimony of Charles J. Loy.)

A. Well, yes, I guess I was, after I joined the A. F. of L.

Q. All right. Who asked you to join?

A. Mr. Eric Hulphers.

Q. Do you remember when and where he asked you?

A. Yes. On the fourth floor, as I was—he was making up orders and I was checking up at the time. I think Mr. Hulphers was making up orders.

Q. Do you remember about when that was?

A. No. I believe it was in September, oh, probably about between the 4th and the 11th.

Q. Now, you paid your dues to the Consolidated Seedsmen's Union?

A. No, sir, I didn't I made application and I paid \$1.00, paid the application, and there was supposed to be a committee meeting. I don't know whether it was held on a Friday or on a Wednesday, and I made application and turned it in, and I [543] thought that was all I had to do, and the next day I asked some of the boys whether they had passed on my application, and they hadn't heard about it, and somebody told me I also had to give them a dollar. So I went down and gave them a dollar.

Q. To whom did you give the dollar?

A. To Miss Viola Gates.

Q. In the office?                   A. Yes.

Q. During working hours?           A. Yes.



(Testimony of Charles J. Loy.)

Q. To whom did you give the application?

A. Miss Viola Gates.

Q. At the same time you gave the dollar?

A. No. I gave the application on one day and came back a day or so later and gave the dollar.

Q. Do you recall whether or not some time during the early part of September, 1940, you, along with certain other persons, made a demand upon Mr. Meyberg for a wage increase?

A. Yes. We—well, the way it started off, we had talked about—

Trial Examiner Paradise: Well, now, just answer the question. Listen to the question that counsel puts to you and answer it.

Q. (By Mr. Cobey) You do recall it? [544]

A. Yes, sir.

Q. Will you tell us when it occurred?

A. I think it was about the first week in September.

Q. 1940?           A. 1940.

Q. Now, will you tell us what happened?

A. Well, the way it started was—do you want it from the start?

Q. With whom did you make your request?

A. Well, it was Eric Hulphers and Bob Montgomery, I believe it was.

Q. And yourself?

A. Yes, and myself. We didn't exactly make a request for a raise right then and there. We went

(Testimony of Charles J. Loy.)

in to see Mr. Meyberg, to find out what his idea on this was.

Q. What time of day did you go in?

A. In the morning.

Q. The only persons present were you three men and Mr. Meyberg? Is that correct?

A. Yes, sir.

Q. Will you tell us what happened? [545]

The Witness: The night before a bunch of the boys went up to the union hall and saw Mr. Woolpert, and eight of us signed applications for membership in the A. F. of L. So the next morning Bob Montgomery came up and asked me if I would go down with him and Eric Hulphers to see Mr. Meyberg, and I said I would. He said he thought it would be a very good idea to ask Mr. Meyberg the details of what a certain party was supposed to have come in for the Seedsmen's Union and asked for a raise, and said he had been turned down definitely for a raise or a closed shop.

So Bob Montgomery asked me to go down, and I said, "Yes," I thought it would be a good idea for us to tell what our thoughts were, and to see what he thought.

So we went down and saw Mr. Meyberg, spoke to him, and I proceeded to ask if absolutely there was any truth in what he was supposed to have told Mr. Watson.

He said, no, Mr. Watson hadn't even come in to see him.

(Testimony of Charles J. Loy.)

Trial Examiner Paradise: Was Mr. Watson the party you referred to before, who asked for a raise and was turned down?

The Witness: Yes. I said, "I think it would probably [546] be a good idea to tell the boys—the rest of the boys in the warehouse, because they have been rather uneasy about that."

And he said, yes, it would be, and to call a meeting in his office at his convenience. And I said, "How about this afternoon?" and he said it was all right that evening, and we were to have the meeting at 4:45 after work, and that is when we asked him for the raise. He told us—first, he told us to make up a petition of what the men wanted in a raise.

Q. (By Mr. Cobey) Now, you have referred to the meeting after quitting time. Such a meeting was held? A. Yes, sir.

Q. And how many men were there?

A. Well, I should judge about twenty.

Q. What happened at that meeting?

A. Well, we told—talked about what Mr. Watson had said, and Mr. Watson came in, and about the time he was ready to relate it and he spoke right out to Mr. Watson—

Q. Who is "he"?

A. Mr. Meyberg spoke up to Mr. Watson, that Mr. Watson had not come in and asked him for a raise for any of the employees at all, and that what

(Testimony of Charles J. Loy.)

he had said was a misstatement, and, oh, there was several different things said about joining the A. F. of L., or joining another union, or having somebody come [547] in to take over that really didn't know the business. And he said, he wound it up by saying he would like to explain things entirely to us at another meeting, if it was possible, and we all agreed that it was.

He said, "Well," he said, "how would it be some night after work, and we will go to a dinner, or we will have a dinner."

And the majority of the boys said, "All right. That will be a good idea." And some of them said, well, they couldn't make it because of their families, they had to go home, and it would be kind of impossible to make it. So he suggested that we make up a list of names that would attend the dinner, and submit it to him, submit the list to him. So I believe Eric Hulphers took charge of that, went around the building, and there was quite a few of the men that did attend the dinner, and then we were to hold the meeting in his office at 7:30 or 8:00 o'clock.

Q. And was there a dinner held?

A. Such a dinner was held.

Q. And such a meeting thereafter in the office was held?           A. Yes.

Q. You were there at the dinner?           A. Yes.

Q. How many employees were there?

(Testimony of Charles J. Loy.)

A. Well, I should say there was about thirty, oh, between [548] thirty and forty.

Q. Were there any women there?

A. No, no women.

Q. Was anyone else there from management, besides Mr. Meyberg?

A. Mr. Schoenfeld was there and Mr. Meyberg. I believe they were the only ones representing the management.

Q. Can you tell us what happened at this meeting?

A. Yes. There really wasn't much said. He wanted to know, asked a few questions, and we didn't have any speaker, and some fellow got up that was supposed to be a vice president of the Seedsmen's Union, and designated Eric Hulphers as the speaker and he pointed him out, and we had a little argument, I believe, and I told him to sit down.

Q. Was that Erich Regan that got up?

A. Yes, I believe it was Erich Regan. It was none of his business, and told him to sit down, that there was no speaker to the meeting, it was Mr. Meyberg's meeting, and he was going to do the speaking. So then he started.

Q. What did Mr. Meyberg say?

A. Well, he explained all the workings of the organization from back about—I believe it was back about 1935 or 1933, somewhere in that time, I don't know just exactly which year it was, but he ex-



(Testimony of Charles J. Loy.)

plained how much money the company had made and how much money the company had lost, and where all [549] the dividends were going, and what he had done to help them, and all the things he had practically invented, like the twist-ems and different little trinkets he had made back east and sold, and all the returns on that was turned back into the company.

And he explained about the loans at the bank, that the loans that the bank had made to the company and how they were paid off, and that he thought it over very thoroughly and had intended to give the employees a raise.

And we said that was very good, we liked it very much.

He said, in fact, that he would have given the employees a raise a little bit sooner, but the bank examiners had the books for such a long time and had them tied up, and he hadn't had them as yet, but as soon as he received them and saw what the profits were for the year, why, he would give us a raise effective as of September 15, 1940. And he didn't specify the date that he would give us the raise, but that it was effective as of September 15, 1940.

Q. Is that all you recall as to what was said?

A. Well, a few little odds and ends. He said about other people coming in to run the business, he didn't think it was a good policy because the

(Testimony of Charles J. Loy.)

people didn't understand the business. Of course, I had an idea he meant the union organizers, or something of that type.

Mr. Watkins: Now, just a minute. I move that portion of [550] the witness' answer be stricken, the very last statement, on the ground it is a conclusion of the witness.

Trial Examiner Paradise: Yes, what the witness took it to mean is stricken. Just tell us what he said, about the outside people coming in.

The Witness: Well, to be exact, I can't remember the exact words, but if a part of them will help, I will be glad to recite them.

Trial Examiner Paradise: Just tell us what you recall.

The Witness: Well, he said something about calling the doctor in, we could call the doctor in if he couldn't remedy the situation himself, then we could call the doctor in, but he thought it would be a poor idea to do so before we had given him a chance.

Q. Do you recall whether or not he said anything about obtaining or granting a raise through the Consolidated Seedsmen's [551] Union?

A. Oh, yes. Yes, he did say that at that time, that the raise would be granted through the officials of the Seedsmen's Union, and he would notify them as to the procedure he was taking. Before that he had said that it didn't make any difference.

Q. What didn't make any difference?

(Testimony of Charles J. Loy.)

A. Whether a man belonged to the Seedsmen's Union or not.

Q. Now, Mr. Loy, you have been in the hearing room all day, have you not?           A. Yes, sir.

Q. There has been certain testimony in regard to certain petitions being circulated about this time?

A. Yes.

Q. Did you sign any of those petitions?

A. Yes, sir.

Q. Which petition did you sign?

A. \$110 a month, made up—

Q. Do you know who drew that up?

A. Yes, sir.

Q. Who did?           A. Al Hook.

Q. Who brought it to you?

A. Al Hook. In fact, he brought two of them to me. He brought one that I didn't like the wording

[552]

in it. It said something to the effect that Mr. Meyberg had to recognize or had to give us the money, and in such a way it was worded that I didn't like it, and I said I refused to sign it, and that anybody that would sign it, it was something like threatening a person, and I said I didn't think it would go over. But I said, "Bring a petition that sets wage scale of certain parties, and graduate it down, and, why, I think it would probably be a good idea. Then I will sign it."

Q. Do you remember when and where you signed the petition?

(Testimony of Charles J. Loy.)

A. Yes, sir. I don't remember the exact time, but it was on the fourth floor at the checking desk.

Q. During working hours?

A. During working hours.

Q. Now, can you place the date that you signed that petition, with respect to this meeting that you had with Mr. Meyberg after working hours and also the dinner at the Terminal Club?

A. Well, my nearest recollection of that was the first meeting with Mr. Meyberg, that is, with the whole group, and it was supposed to have been laid on his desk at that time.

Q. That was the meeting after quitting time?

A. Yes.

Q. The petition you signed was laid on his desk at that time?

A. Well, I saw some petitions laid on the desk, but I don't know exactly whether it was the petition that I signed. There was also one other petition.

[553]

Q. Do you know who drew up the other petition?

A. Yes, sir. Jack Butterfield.

Q. How do you know?

A. Because I talked to him about signing the \$100. He said, no, he didn't think so. I said, "Why not?"

He said, "It is too much money to ask for."

I said, "I don't think it is too much money to ask for." I said, "I only get \$70 a month." Or, I

(Testimony of Charles J. Loy.)

said, "I am getting \$80 a month, and I know you are getting a little more than I am, because you have been here longer."

He said, "I don't get much more than that, but," he said, "I will draw up a petition for ten per cent."

I said, "What is ten per cent? Ten per cent wouldn't make any raise at all." I said, "I am getting \$80 a month now. I would be getting \$90 a month. Why not ask for something that would be worth asking for? It don't hurt to ask for anything."

He said, "I am making up a petition for ten per cent." And there was quite a few people in the house did sign the petition for ten per cent.

Q. How do you know?

A. I know Nesbit signed it.

Q. How do you know?

A. Because I saw him sign it.

Q. Now, this conversation you related that you had with [554] Butterfield, you say that occurred on the fourth floor?

A. On the fourth floor, yes, sir.

Q. What time of day?

A. Well, I believe the petition I signed, I signed around just before lunch or a little bit after lunch. It was around about that time.

Q. Can you place the date?

A. No, I can't.



(Testimony of Charles J. Loy.)

Q. Can you place it with respect to the Terminal Club dinner?

A. Yes. It was before the first meeting.

Q. The first meeting?

A. The large group meeting, yes.

Trial Examiner Paradise: Would that be before you went down to the A. F. of L.?

The Witness: No, sir. We went down to the A. F. of L. before that. In fact, we went down—we went down to the A. F. of L., I believe, the night before that.

Trial Examiner Paradise: You mean this conversation with Butterfield happened on the morning after you went down to the A. F. of L.?

The Witness: Yes, sir.

Trial Examiner Paradise: All right.

Mr. Cobey: That is all. [555]

#### Cross Examination

Q. (By Mr. Watkins) Mr. Loy, what made you conclude that you would come back and ask Mr. Meyberg for an increase after you had been down to the A. F. of L.?

A. What made us conclude?

Q. Yes.

A. Well, I will tell you: When we first went down to the A. F. of L., everybody in the house was pretty sore, and it was supposed to have been put up before Mr. Meyberg for a wage increase by the Seedsmen's Union, and it made all the boys pretty sore when they came back to a meeting and

(Testimony of Charles J. Loy.)

found out that it was impossible to get a raise. In other words, it was said at the meeting, it was told to me. Of course, in your estimation, it would probably be hearsay, but it was that it was absolutely impossible for a raise of any kind, and it made all of us pretty mad, even though I didn't belong to the Seedsmen's Union.

Q. In other words, what you did when you came back from the A. F. of L. meeting was to see whether you could solve your problem yourself without calling in a doctor?      A. No, sir.

Q. Then why did you go to the management?

A. I thought it was quite fair—it would be fair of us, at least, to notify them or find out exactly what Mr. Meyberg had said, and see if there was a possible chance for a raise. [556]

Q. In this meeting with Mr. Meyberg, did Mr. Meyberg say anything to Mr. Hulphers?

A. Did he say anything to Mr. Hulphers?

Q. Yes.

A. He said a lot of things, but I don't know whether they were addressed to Mr. Hulphers.

Q. Do you remember his addressing any remarks to Mr. Hulphers?

A. No, I don't. He was talking to Mr. Hulphers, yes. I don't know just exactly what was said though.

Q. Do you remember any conversation of this character, when Mr. Meyberg said to Mr. Hulphers, "Are you speaking for the men?" Do you remember anything of that kind?

(Testimony of Charles J. Loy.)

A. No, I truthfully don't.

Q. Do you remember any comment by Mr. Hulphers that he wasn't going to make any answer for anybody, or something to that effect?

A. No, sir. I didn't pay attention.

Q. Did you consider these petitions that you had mentioned—

A. Yes sir.

Q. —as being circulated for the Consolidated Seedsmen's Union or the employees themselves?

A. Absolutely not, because at the time Mr. Hook was not a member of—well, I guess you would call it an officers' capacity or director's capacity in the Seedsmen's Union. In [557] fact, he wasn't thought of very well there.

Q. In the Seedsmen's Union?                      A. Yes, sir.

Q. He was sort of sympathetic with you boys?

A. Yes, he was with us from the start, until they elected him to office. Then he dropped us. When they elected him to an office in the Seedsmen's Union, he dropped us like a hot potato.

Q. It was commonly known around there that you boys were circulating these petitions and the boys of the Consolidated Seedsmen's Union?

A. In fact, I think everybody knew it, because Mr. Hook went down to the office or some place and had one typed up; and the first one he brought out was wrote out in longhand.

Q. Mr. Hook went down to the office and got it typed?

(Testimony of Charles J. Loy.)

A. I don't know if he went to the office. There are typewriters in the office and on the fifth floor.

Q. He went some place in the plant?

A. Yes.

Q. And you boys circulated that whenever you could get names on it?

A. Mr. Hook did, and Mr. Butterfield circulated one for what we called the house.

Q. But no one interfered with the circulation of either petitions, did they? [558]

A. Not to my knowledge, no, sir.

Q. (By Trial Examiner Paradise) Only one matter, Mr. Witness: You testified that in the meeting held in Mr. Meyberg's office one afternoon after working hours, there was some talk of the A. F. of L. Do you remember having stated that?

A. Yes, I believe I did say something in that form. I don't just exactly recollect what it was.

Q. Can you tell us, or do you recall any of the conversation that was had that afternoon about the A. F. of L. between the men and Mr. Meyberg?

A. No, sir, I can't. I truthfully can't. Our main object then was to find out just exactly where we stood with Mr. Meyberg.

Q. Do you remember anything being said that afternoon about the A. F. of L. by Mr. Hulphers?

A. No, I don't.

Q. You can't give us any further light on it?

A. Not on anything said about the A. F. of L.,

(Testimony of Charles J. Loy.)

no, sir. In fact, nothing was said about the A. F. of L., that I know of.

Q. You say nothing was said?

A. Not that I know of. [559]

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## RESPONDENT'S EXHIBIT 1

Consolidated Seedsmen Union

Los Angeles, Calif.

Dec. 8, 1939

Germain Seed & Plant Co.

Mr. Meyberg:

At the last meeting of the Board of Directors of the Consolidated Seedsmen Union there was considerable discussion about coming holidays. The Union feels that since Christmas and New Years fall on Monday this year it would be possible to arrange a three day holiday for every Union Member at one time or the other. Consequently a plan has been worked out which we wish to submit to you for your approval.

By dividing the employees (who are union members) into two groups it would be possible to maintain business and efficiency with one group working while the other was not. The Union feels that it would be to the best interest of the Germain Seed & Plant Co., to allow half of the employees at the wholesale to have the Saturday before Christmas



(Testimony of Charles J. Loy.)

off while the other half had the Saturday before New Years off; and the employees of the Hill St. Store and the Branch to have the corresponding Tuesdays after the holiday off.

Under such a plan a skeleton crew would always be working and there should be no decrease in the business or the efficiency on the Company.

The Consolidated Seedsmen Union Inc. would appreciate your careful consideration of this plan.

Yours truly,

THE CONSOLIDATED SEEDSMEN  
UNION INC.

RICHARD KADOUS

President.

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RESPONDENT'S EXHIBIT 2

Consolidated Seedsmen's Union, Inc.

2415 12th Avenue

Los Angeles, Calif.

January 24, 1938

Mr. Theodore Schrader  
6133 Ethel Avenue  
Van Nuys, California.

Dear Mr. Schrader:

At the last Board of Directors Meeting, held on January 18th, it was reported that your present position with the Germain Seed and Plant Com-

(Testimony of Charles J. Loy.)

pany includes hiring and firing of employees for the firm.

Under the regulations of the Wagner Labor Act, your holding such a position makes you ineligible for membership in an employees' union.

Therefore, I was instructed by the Board of Directors to inform you that your membership in the Consolidated Seedsmen's Union has been cancelled, and to request that you surrender your Membership Card and Button to the Director for Division 7 who is Morris Stearn.

Trusting that you understand our position in this matter, we are

Very truly yours,  
CONSOLIDATED SEEDSMEN'S  
UNION, INC.

DT

Secretary.

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#### RESPONDENT'S EXHIBIT 4

##### Agreement

This agreement made and entered into this ..... day of February 1938 by and between the Germain Seed and Plant Company, a corporation duly created under the laws of the State of California, hereinafter called the Company, and the Consolidated Seedsmen's Union, Inc., also a corporation created under the laws of the State of California, hereinafter called the Union, witnessth:—

(Testimony of Charles J. Loy.)

Whereas it is agreed that the Union shall from time to time furnish the Company with a written list of employees who in its opinion are detrimental or undesirable to the welfare of either or both the Company and the Union.

It is further agreed that the Company shall, before discharging or laying off any employees, first consider aforesaid list and choose, if possible, employees recommended by the Union for dismissal, thereby eliminating those who are unfit, incompetent, or undesirable to the efficient operation and management of both the Company and the Union, thus resulting in a mutual benefit to both.

This agreement shall remain in effect and force hereafter subject to the right of either party to terminate the same on giving one month's notice in writing to the other party.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

CONSOLIDATED SEEDSMEN'S  
UNION, INC.  
GERMAIN SEED & PLANT CO.

## RESPONDENT'S EXHIBIT 5

Germain's

Germain Seed and Plant Co.  
General Offices and Warehouse  
747 Terminal St. - TRinity 2821  
Los Angeles, Calif.

October 5, 1940

Board of Directors

Consolidated Seedsmen's Union

With reference to the subject of salary suggestions from our Retail Division I wish to call your attention to the condition of this division of which I have spoken to you previously, namely that it is operating at a loss and it is necessary for us to approach the matter from a different angle than other departments of our business.

Please bear in mind that we must have a profit from our Retail Divisions also in order to justify and sustain salary increases both for this department and also other branches of the firm. Losses in one division cut down the firm's profits and make it harder to justify increased expense due to salary increases.

With out Retail Store operating at a loss we must have increased sales and more efficient operation there and in all other branches that operate for the benefit of the Retail Store.

In view of the foregoing I have attached a carefully outlined plan by which every employe at the Retail Store both salespeople and non-selling em-

(Testimony of Charles J. Loy.)

ployes will benefit directly by their individual efforts and also by their cooperation with others in the organization. The plan permits of substantial returns to everyone, if each in turn produces results.

The Retail Store has a selling job in increasing the number of our customers, in properly handling them both as to sales and service, in reducing expense items so that the Retail loss can be eliminated and every employe will benefit financially.

M. MEYBERG

[Illegible]

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WALTER P. SAGE,

called as a witness by and on behalf of the Respondent, having been previously duly sworn, testified as follows:

Direct Examination

Trial Examiner Paradise: You have already been sworn, Mr. Sage. Be seated.

Q. (By Mr. Watkins) Mr. Sage, directing your attention to the meeting held in the warehouse at the Germain Plant on or about August of 1937, that is, the first meeting that was held there prior to the time that Mr. Voorhees was brought in, I want to ask whether or not you at that time or subsequently received any instructions or suggestions from anyone connected with the management



(Testimony of Walter P. Sage.)

of the company with regard to the holding of that meeting?      A. No, sir.

Q. Did you at any time receive any instructions or suggestions from anyone connected with the management concerning the formation of an independent union?      A. No, sir.

Q. Or the desirability of an independent union?

A. No, sir.

Q. Mr. Sage, at that meeting that I have just mentioned, did you make any statement to the effect that the Germain Seed Company, because of the financial condition, or otherwise, of Mr. Schoenfeld and Mr. Meyberg was in a position to close up [564] the plant?      A. No, sir.

Q. Are you positive of that?

A. I am positive of that.

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**MANFRED MEYBERG,**

called as a witness for the Respondent, having been previously duly sworn, testified as follows:

**Direct Examination**

Trial Examiner Paradise: You have already been sworn. Be seated, please.

Q. (By Mr. Watkins) Mr. Meyberg, you are familiar, are you, with the duties of the various men working in the plant?      A. I am.

Q. Are you familiar with the duties of Mr. Sage, who just [565] testified?      A. I am.

(Testimony of Manfred Meyberg.)

Q. Will you state whether or not he is in a supervisory capacity, or, state briefly what his duties are, please?

A. He is a purchasing agent; buys sundries and certain articles connected with a definite department down there.

Q. Does he have the power to hire or fire anyone?

A. No, sir.

Q. Or recommend hiring or firing? A. No.

Q. What about Mr. Hook? What is his capacity?  
Mr. Al Hook, I believe that is.

A. He is a millman. A millman is a man that has charge of the—in connection with the cleaning of the seeds, helping in that department.

Q. Does he have the power to hire and fire anyone? A. No.

Q. Or recommend hiring or firing?

A. No, sir.

Q. What about Mr. Frauenberger? At that time he was a shipping clerk. That is prior to the last position that he had. What about his position at that time?

A. He had charge of deliveries.

Q. City shipping, rather?

A. City shipping, yes. He had no rights in connection with [566] labor in any instance.

Q. He doesn't hire or fire? A. No.

Q. Or didn't have the power to hire or fire?

A. No.

Q. Or to recommend hiring or firing?

(Testimony of Manfred Meyberg.)

A. No.

Q. Would you classify Mr. Hook, for instance, as a gang leader or leadoff man, or do you have any such classification in your work?

A. We don't have any classification of that kind, but I guess it is a man that knows a little more, handles some of the work, tells some of the boys what to do, and so forth. If that is so, that is what his duties would be.

Q. I believe Mr. Watson is in the same position now as Mr. Frauenberger did occupy? He is in charge of city shipping? A. Yes.

Q. Would you classify Mr. Hook, Mr. Frauenberger in the work he did do, and Mr. Watson, as doing substantially the same character and class of work? A. I would say so.

Q. That is with respect to their supervisory powers? A. Yes, that is what I mean.

Mr. Cobey: Mr. Examiner, I would like to request that that question and answer be stricken as conclusions of the [567] witness. I think the duties as outlined speak for themselves.

Trial Examiner Paradise: I will let the answer stand.

Q. (By Mr. Watkins) Mr. Meyberg, will you state what funds or property or other thing of value either you or your corporation has given or donated to the Consolidated Seedsmen's Union since its inception?

(Testimony of Manfred Meyberg.)

A. I think—I know we gave them some money to buy some ice cream on a picnic. We paid—we loaned them a truck for a picnic. We paid a traffic ticket for one of the boys that drove the truck, and once we gave some prizes, that is, cigarettes, in connection with the baseball game.

Q. Was this all at the same event or at different events?      A. At different events.

Q. Were those events which all of the employees of the company attended?      A. Yes.

Q. Or were invited to attend?

A. Yes, I think they were invited by the union.

Q. Did you at any time give any instructions or make any requests of anyone under you, whether a supervisor or an employee, that an independent union be formed?      A. Absolutely not.

Q. And did you give any instructions or make any requests of anyone under you that an effort be made to keep out any outside union? [568]

A. No.

Q. Did you ever make a request for a list of union members, that is, of the Consolidated Seedsmen's Union?      A. Did I make a request?

Q. Yes, did you make such a request?

A. No.

Q. Did you ever make any request for a list of delinquent union members?      A. No.

Q. Mr. Meyberg, one of the witnesses I believe has testified that on or about August or September of 1937 there was a general meeting called of

(Testimony of Manfred Meyberg.)

the supervisors and older employees in or near your office. Do you recall any such meeting having been held?      A. One that I attended?

Q. Yes, that was called for the general supervisory personnel and also some of the older employees?

A. For what purpose? I mean, we have had meetings down there, but I meant any special purpose?

Q. Presumably to discuss the organizing activities that were going on around the plant there.

A. Absolutely not.

Q. Do you remember any meeting of any character for the discussion of such a subject?

A. No. [569]

Q. You know Mr. Richard Kadous who used to work for you?      A. Yes, sir.

Q. Were you the one who was responsible for his discharge?      A. I was.

Q. Was he at that time the president of the Consolidated Seedsmen's Union?      A. Yes.

Q. Did you ever discharge or lay off or give instructions for the discharge or layoff of any employee because he was delinquent in his dues to the Consolidated Seedsmen's Union?      A. No.

Q. Did you ever discharge or lay off or give instructions for the discharge or layoff of any employee because he had agitated against the Consolidated Seedsmen's Union?      A. No.

Q. Was there ever any distinction made, so far



(Testimony of Manfred Meyberg.)

as you were concerned, or under your direction, between members and non-members of the Consolidated Seedsmen's Union, with respect to their work at the plant— A. None.

Q. —or elsewhere? A. No.

Q. You have a secretary at the present time who is not a member of the Consolidated Seedsmen's Union; is that correct. A. Correct.

[570]

Q. Has she ever discussed with you whether or not she could belong to the union?

A. Whether she should?

Q. Yes, or whether she could.

A. She has discussed it with me, yes.

Q. What did you tell her?

A. I told her she should do as she pleased.

Q. You didn't restrict her one way or the other?

A. Absolutely not.

Q. Directing your attention, Mr. Meyberg, to a time on or about the early part of October of 1940, do you remember whether Mr. Thrift, I believe it is Jack Thrift, came in to see you about his being laid off?

A. I remember his talking to me about it.

Q. Do you remember who was present at the time?

A. No one was present; just Jack and myself.

Q. Was it during working hours?

A. Yes, up at the retail store.

(Testimony of Manfred Meyberg.)

Q. Will you state what was stated by each one of you?

A. He came to me and he said, "Mr. Meyberg, I understand I am going to be laid off." He said, "It is going to make a hardship on me. My wife is going to have a baby," and he said, "I don't know where—" He said, "I don't know where I would get another job."

I said, "Well, leave it with me and I will look it up." [571]

He said, "Thank you." And that was the end of the conversation.

Q. Did you thereafter look it up?

A. Yes. When I got down to the wholesale plant, I called in Mr. Hill and told him my conversation, and told him to take care of Thrift.

Q. And Mr. Thrift is still there, is he, at the present time?      A. Yes.

Q. Did you know at the time Mr. Thrift came into your office on or about October 3, 1940, that he was a member of the American Federation of Labor?

A. You mean, when I talked to him up at the retail store?

Q. Yes.      A. Yes, I understood so.

Q. Mr. Meyberg, I show you Board's Exhibit 12-A. I asked you to examine that while we were recessing, and I asked you to note the various suggestions listed and remarks made in pencil after each one. I now ask you if that is substantially

(Testimony of Manfred Meyberg.)

correct in accordance with your understanding of your agreement with those suggestions?

A. Yes, it is.

Q. And were those——

Trial Examiner Paradise: Excuse me. I don't understand what that last answer is. Does that mean the items marked "O.K." were the items you agreed to? [572]

The Witness: Correct, and the other ones were for discussion.

Q. (By Mr. Watkins) Was there ever any agreement setting forth the suggestions therein embodied, signed by the company? A. No.

Q. Was a written agreement embodying those suggestions ever presented to the company for signature? A. No.

Q. Mr. Meyberg, I show you Board's Exhibits 18-A and 18-B, and I will ask you to examine them and then I will ask you questions about them.

(The documents referred to were examined by the witness.)

Q. Board's Exhibit 18-A is a copy of a letter addressed to the company, stating that the Consolidated Seedsmen's Union has a majority of the employees. Board's Exhibit 18-B is your reply recognizing the union, and stating that you have checked and found they do have a majority. Will you state what you did to determine the majority, after you received Board's Exhibit 18-A and before you wrote Board's Exhibit 18-B?

(Testimony of Manfred Meyberg.)

A. We received a list of the names. I turned them over to Mr. Sidebottom to check. Mr. Sidebottom checked them and reported to me that they were in order, and, consequently, I wrote the letter.

Q. Did you direct him to check not only the names, but the [573] signatures? A. Correct.

Q. I show you, Mr. Meyberg, Respondent's Exhibit 1, which is a letter to the company from the Consolidated Seedsmen's Union, with reference, I believe, to time off before Christmas and New Year's, the letter being dated December 8, 1939.

A. Yes.

Q. Will you explain, please, what was done with respect to that request?

A. We carried out the suggestion of the union and worked out something for the employees, so that they could get the holidays suggested.

Q. I show you a further letter, being Respondent's Exhibit 3, with reference to a similar matter concerning Decoration Day, I believe, and the 4th of July. Will you state, please, what was done by the company with respect to that?

A. The same thing was done there, where the request was made, and we carried out their suggestion. [574]

(Testimony of Manfred Meyberg.)

RESPONDENT'S EXHIBIT 3-A

Los Angeles, Calif.

May 24, 1939

Mr. Manfred Meyberg  
Germain Seed & Plant Company  
747 Terminal Street

Dear Mr. Meyberg:

At a special meeting of the Board of Directors of the Consolidated Seedsmen's Union, held at noon on May 24, it was voted that the Union ask the Germain Seed & Plant Company to give its employees either Monday before Decoration Day or Monday before the 4th of July as a holiday; this providing that only half of the employees take the day before Decoration Day, and the other half have the day before the 4th of July.

Therefore, your early reply to this request will be greatly appreciated.

Yours very truly,

CONSOLIDATED SEEDSMEN'S  
UNION

RICHARD KADOUS

Pres.

RK:DT



(Testimony of Manfred Meyberg.)

RESPONDENT'S EXHIBIT 3-B

May 24, 1939

Consolidated Seedsmens Union,  
Los Angeles, Calif.

Gentlemen:

Att. Mr. Richard Kadous.

This is to acknowledge receipt of your letter requesting Germain Seed & Plant Co. to give its employees either Monday before Decoration Day or Monday before the Fourth of July as a Holiday. This would allow half of the employees to take the day off before Decoration Day and the other half, the day before the Fourth of July.

The management has considered this suggestion and it is their pleasure to advise you that bulletins to this effect have been issued to the Department Managers.

Thanking you for taking this matter up with us, we remain

Sincerely yours,

GERMAIN SEED & PLANT CO.,  
MANFRED MEYBERG,

Pres.

MMS

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Q. (By Mr. Watkins) Respondent's Exhibit 3-B is the letter of the company in reply to Respondent's Exhibit 3-A? Is that correct?      A. Correct.

(Testimony of Manfred Meyberg.)

Q. I show you Respondent's Exhibit 4, which purports to be a draft of some proposed agreement between the Consolidated Seedsmen's Union and the company, and will ask you whether or not you received that document?

(Handing document to witness.)

A. I saw that document, yes.

Q. Do you remember about when it was received by the company?      A. No, I do not.

Q. Do you remember from whom it was received?      A. No, I don't remember that.

Mr. Watkins: This document, Mr. Examiner, is a proposed agreement concerning the preferential employment of members of the Consolidated Seedsmen's Union. [575]

Q. (By Mr. Watkins) I will ask you, Mr. Meyberg, whether or not the company ever agreed to this Respondent's Exhibit 4, either in form or substance?      A. Absolutely not.

Q. I show you Respondent's Exhibit 5, which is a letter addressed to the Board of Directors of the Consolidated Seedsmen's Union, and signed by you, for the company I believe, and will ask you whether or not that letter was written on or about the same time as a similar letter dated October 3, 1940, being Board's Exhibit 34-D, and being the announcement with respect to increase in wages to the employees of the warehouse?

Mr. Cobey: May I have the question read?

(Testimony of Manfred Meyberg.)

Trial Examiner Paradise: Read it, please.

(The question was read by the reporter.)

The Witness: I don't remember the other letter.

Q. (By Mr. Watkins) I will show you Board's Exhibit 34-D, which I referred to in my previous question, Mr. Meyberg, and ask you to examine it.

(Handing document to witness.)

A. Yes, that letter was written.

Q. In other words, Board's Exhibit 34-D concerns the employees of the warehouse, and Respondent's Exhibit 5 concerns the employees in the retail store. Is that right?

A. Correct, yes, sir. [576]

Mr. Watkins: You may ask him.

#### Cross Examination

Q. (By Mr. Cobey) Mr. Meyberg, how did you know Jack Thrift was a member of the A.F. of L. when he came in to talk to you about his pending layoff? A. Mr. Hill had told me.

Q. When did he tell you that?

A. Oh, prior to the time when Thrift had talked to me.

Q. Before he had come in? A. Yes.

Q. How long prior? Do you remember?

A. That I wouldn't remember.

A. Correct, yes, sir.

Q. There has been testimony here to the effect that the Consolidated Seedsmen's Union from time to time submitted lists to you of members who were

(Testimony of Manfred Meyberg.)

delinquent in the payment of their dues, and also, that they submitted lists to you of members of the Consolidated Seedsmen's Union who were [577] unemployed at different times, so that they might be given preference in re-hiring when vacancies occurred. Now, did you receive these monthly lists from them?

A. I didn't receive them monthly. I have had lists and in some instance I recognized them and in some instances I did not. It depended on the situation and the people who were on the list.

Q. As I understand your testimony then, you used your own judgment as to what to do about the names that were submitted to you on these lists, regardless of whether they were members in good standing, at the Consolidated Seedsmen's Union or not?

A. Yes, I did.

Q. And is it your testimony, then, that their union membership or non-membership, or their good standing or bad standing in the union had nothing to do with the action which you took in regard to these people?

A. Correct.

Q. Did you ever so advise the Consolidated Seedsmen's Union?

A. No, I did not.

Q. Did you have a conference with the Consolidated Seedsmen's Union about the agreement which has been marked Respondent's Exhibit 4?

A. Which one is that? This one?

Q. That is the one before you.

A. I don't remember exactly about that. Frankly

(Testimony of Manfred Meyberg.)

speaking, I [578] don't. I know we didn't agree to anything of that kind, but how it came up or how it came to me, I do not remember the circumstances.

Mr. Watkins: Mr. Examiner, are you leaving a particular question there? May I ask a question then which I think might clarify the matter?

Trial Examiner Paradise: Certainly.

Mr. Watkins: Did you have instances in which so-called grievances were filed with you about such matters, and in which you did hire the union member, or something of that character?

The Witness: I have had instances of that kind, yes.

Mr. Watkins: That is all.

Q. (By Trial Examiner Paradise) I don't understand that. Will you explain that, please?

A. Well, they would—a committee would come in, or somebody from the union would, and inquire if I would hire a certain member of the union. In some instances I would say, yes, I could, and in other instances I would not.

Q. Then, as I understand your testimony, you never gave the Consolidated Seedsmen's Union any reason for believing that their members were entitled to any preference?

A. Not in any form, except by conversation, where I told them I would try to take care of them where I could.

Your question is whether we gave them preference over [579] anybody else that might apply for



(Testimony of Manfred Meyberg.)

a position? Preference over—what I would like to get clear in my mind is preference over whom.

You see we have—let me explain this to you: We have in our work down there a number of people that come in temporarily during the busy season, and they may have come in temporarily for five or six years and they may get to know the organization, and presumably some of those people were members of the union, and their thought was that presumably where any extra work would come in, that we would favor them rather than some new employee, where somebody might come in in connection with a job, and in those instances where the people were good and where they have been coming back for years, why, we have always favored them, whether they were union members or not.

Q. Then, as I understand your testimony, you never made any statement to the Consolidated Seedsmen's Union, which should have led to a belief that if you had two people who had been working, let us say, temporarily for four or five years, and one was a member of the Consolidated Seedsmen's Union and the other was not, that the union member would get preference?

A. If the union member was the best worker, he would be preferred. If the other one was, he would get the preference.

Q. And if all factors were equal, and one was a union member and one was not, did you ever state what your policy was on that? [580]

(Testimony of Manfred Meyberg.)

A. Yes. I told them I would favor the union man or the woman, whichever the case might be.

Q. Now, are you able to recall when you made that statement of policy to the Consolidated Seedsmen's Union?

A. I wouldn't be able to say that, but it has been a long time ago.

Q. Do you remember whether or not it was in connection with the discussion of that agreement?

A. No, it was not.

Q. Was there a similar statement of policy with respect to the layoff of employees, that is, if two employees were equal in efficiency and experience, and one were a member of the Consolidated Seedsmen's Union and the other were not, that preference would be given to the one who was a member of the union?

A. Well, frankly speaking, I wouldn't know who were members of the Consolidated Union and who weren't, and I don't believe the personnel or the person who had charge of the hiring and firing of those people knew either.

Q. Who was that person?

A. Well, it might be—I don't know what department that might be in.

Q. Of course, these union lists contained some information along that line, did they not?

A. I don't know who were members of the union. I haven't [581] the least idea who is a member of

(Testimony of Manfred Meyberg.)

the union and who isn't a member of the union. It never came to my attention.

Q. All right. Now, one other subject I wanted to ask you about, Mr. Meyberg. Were there occasional meetings of supervisory employees and older employees for different reasons?

A. What do you mean, "for different reasons"?

Q. I mean, were there meetings of supervisory employees and the older employees from time to time?

A. We haven't discriminated. We have a meeting every Saturday morning down at our place. The place is closed, but our department managers are down there every Saturday morning.

Q. And those meetings are for what reasons?

A. Organization meetings for the purpose of bettering the service, in connection with the service.

Q. And who attends them?

A. The department managers.

Q. Will you name the people who attend them?

A. Mr. Sage, Mr. Hill, Miss Wilson, Miss Court, Mr. Marks, Mr. Gates, Mr. Pieters—let's see if there is anybody else; I guess that is all—and Mr. Schoenfeld.

Q. Have you had meetings at which other employees were present, besides these department managers—

A. No.

Q. —whom you have mentioned? A. No.

(Testimony of Manfred Meyberg.)

Q. Has Mr. Frauenberger, in particular, ever attended a meeting which was limited to supervisory employees of the company and such older employees?

A. Not to my knowledge. He might have come up to see me on some point in his department, but as far as the meeting was concerned, I don't remember anything.

Q. There was a statement attributed to Mr. Frauenberger by one of the witnesses in this case, to the effect that he had sat in on meetings with the higher-ups in the management. Is that correct?

A. Not that I remember. [583]

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#### RESPONDENT'S EXHIBIT 6-A

#### EXCERPTS FROM MINUTES OF MEETING OF BOARD OF DIRECTORS OF CONSOLIDATED SEEDSMEN'S UNION

October 13, 1937

Page 1, Line 4—page 2, Line 9

And

Page 3, Lines 23-26

The meeting of the Board of Directors was called to order by the President, Harold Frauenberger, at 7:30 o'clock P.M., on October 13, 1937, at the residence of Tom Farley, 713 W. 84th St., Los Angeles, California.

Rollcall showed all the Directors present except R. Luck.

The minutes of the meeting held September 28th were read by the Secretary, and it was moved by Tom Farley and seconded by Blanche Eaton that these minutes be approved as read. Motion carried.

The minutes of the meeting held October 5th were then read by the Secretary, and it was moved by Harry Fenster and seconded by Morris Stearn that these minutes be approved as read. Motion carried.

Harold Frauenberger reported that in accordance with instructions given him at the meeting of September 28th, he had secured the Corporation Seal, Membership Cards, Buttons, and additional Membership Application cards. It was moved by Morris Stearn and seconded by D. G. Hatfield that this report be accepted. Motion carried.

The secretary read the following seventeen applications for membership:

- |                  |                   |
|------------------|-------------------|
| Guy E. Lincoln   | E. J. Porter      |
| Theo I. Fielding | L. Helen Martin   |
| Justin Scharff   | Otto A. Witt      |
| E. Ganster       | Frances Fox       |
| William J. Smith | Clara L. Seastedt |
| Eleanor Newmark  | Margaret Weihe    |
| Elton S. Cadd    | Evelyn E. Fox     |
| Louise Grow      | Helen Linnell     |
| Ethel Durand     |                   |

It was moved by Harry Fenster and seconded by



Blanche Eaton that these membership applications be accepted. Motion carried.

Bills read were as follows:

To the Treasurer for supplies .....\$ 1.45

To the Secretary as follows:

Refund Initiation fee to A. W.

Huskins .....\$ 1.00

Filing of Corporation Papers with  
the County Clerk ..... 1.00

Stationery etc. .... 3.00

Buttons & Corporation Seal ..... 20.70

Membership Cards ..... 7.21

Membership Application Cards ..... 1.50

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\$34.41

It was moved by Blanche Eaton and seconded by D. G. Hatfield that these bills be paid by the Treasurer. Motion carried.

Motion was made by Morris Stearn and seconded by D. G. Hatfield that \$2.00 be paid to Tom Farley for the use of his home for this meeting. Motion carried.

It was moved by Morris Stearn and seconded by Blanche Eaton that Voorhees & Voorhees be paid \$10.00 on account. Motion carried.

The Secretary and Treasurer were instructed to go ahead and purchase whatever supplies were needed and present their bill at the next meeting.

(Page 3, Lines 23-26)

It was moved by Harry Fenster and seconded by Blanche Eaton that the Secretary secure the bond for the Treasurer at an expense of \$3.75 for one year, and that the Treasurer draw this amount in favor of J. B. Zweigart & Company in payment of same. Motion carried.

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RESPONDENT'S EXHIBIT 6-B

EXCERPTS FROM MINUTES OF MEETING OF BOARD OF DIRECTORS OF CONSOLIDATED SEEDSMEN'S UNION

December 7, 1937

Page 2, Lines 7-12

Richard Luck reported that Mae Molyneaux felt that seniority should count when temporary work, such as radio work, started and extra help was needed. Richard Luck was advised to take the matter up with Mr. Meyberg.

As nothing definite had been agreed upon in regard to the hours and wages of Viola Gates, Fern Wingrove was advised to see Mr. Meyberg in this regard.

## RESPONDENT'S EXHIBIT 6-C

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLIDATED SEEDSMEN'S UNION

January 18, 1938

Page 2, Lines 14, 15

And

Page 2, Line 32—Page 3, Line 8

R. Luck reported that in regard to Mae Molyneaux, as the radio work had not as yet started, she had not been employed as yet.

(Page 2, Line 32—Page 3, Line 8)

Morris Stearn reported that Theodore Schrader, a member, working at the Van Nuys Ranch Store, now held the position of hiring and firing employees. As no member of the Union can be in a position of authority with the right to hire and fire, it was moved by Harry Fenster and seconded by R. Luck that Theodore Schrader be removed from the membership list. Motion carried unanimous. The Secretary was instructed to write Mr. Schrader and inform him of this action of the Board of Directors.

It was decided to ask Mr. J. P. Voorhees to speak at our next general meeting to be held on January 25th, for about 15 minutes, on what other Unions are doing, and what the League of Independent Unions is and is striving for.

RESPONDENT'S EXHIBIT 6-D

EXCERPTS FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLIDATED  
SEEDSMEN'S UNION, INC.

February 22, 1938

Page 1, Lines 8-10;

And

Lines 15-18.

And

Page 2, Lines 5-16.

President Frauenberger introduced Mr. Michael Fanning, Executive Secretary of the League of Independent Unions, who told us about the League and then answer question asked by the members.

(Lines 15-18)

Allan Hook and Theo Fielding were each called upon to report their recommendations after attending a meeting held February 4th by the League of Independent Unions. After some discussion, any decision in regard to this Union joining or not joining the League was laid over until the next meeting.

(Page 2, Lines 5-16)

Mary Martinez asked whether temporary employees, those who are known to be employed for a specified short time, were to be approached and try to secure their membership to this Union. Presi-

dent Frauenberger reported that so far these employees were not being approached.

William Epperson brought up the matter of the drivers getting overtime. He was instructed to turn in his overtime, in writing, to Mr. Hill.

H. E. Coleman inquired as to what was being done about the petitions signed at the retail stores in regard to members having two half days off per month. He was advised by the President that the Board of Directors expected to meet with Mr. Meyberg in a few days in regard to this matter.

Fern Wingrove suggested that something be done in regard to ventilation at the office.

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## RESPONDENT'S EXHIBIT 6-E

### EXCERPTS FROM MINUTES OF MEETING OF BOARD OF DIRECTORS OF CONSOLIDATED SEEDSMEN'S UNION

March 1, 1938

Page 1, Lines 20-24

Due to the fact that Edward Miller, who was employed at the Hill Street Store, had not proved to be a permanent employee, it was moved by D. G. Hatfield and seconded by Fern Wingrove that Mr. Miller be refunded his initiation fee of \$1.00 and two months' dues of \$1.00 and his application for membership refused. Motion carried.



RESPONDENT'S EXHIBIT 6-F

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOL-  
IDATED SEEDSMEN'S UNION

May 3, 1938

Page 1, Lines 20-23

It was reported by Mr. Fenster that at the Main Street Store a Union Member had been laid off and a non-Union Member kept on. However, as the Union Member made no request that his case be investigated, the matter was dropped.

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RESPONDENT'S EXHIBIT 6-G

EXCERPTS FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLIDATED  
SEEDSMEN'S UNION, INC.

July 18, 1938

Page 1, Lines 12-18.

The matter of what attention to give the members who are home ill and away from work, was discussed; and on motion made by Tom Farley, seconded by Morris Stearn, and carried, it was decided to send \$5.00 each to Myrtle Butterfield and Minnie T. Sievers, as they are both now ill at home. The motion included that hereafter this practice will be followed only when so voted and passed on by the Directors.

## RESPONDENT'S EXHIBIT 6-H

EXCERPTS FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLI-  
DATED SEEDSMEN'S UNION, INC.

August 15, 1938

Page 1, Lines 10-14.

Eric Regan brought up the matter regarding eight hours a day with the same pay, instead of nine hours at the ranch. Stanley Watson moved that this question be taken up at the next Directors' meeting. The motion was seconded by Louie Fenster and carried.

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## RESPONDENT'S EXHIBIT 6-I

EXCERPTS FROM MINUTES OF SPECIAL  
MEETING OF BOARD OF DIRECTORS  
OF CONSOLIDATED SEEDSMEN'S  
UNION

September 19, 1938

Page 1, Lines 4-17

There was a general discussion of Erich Regan having the right to hire and fire, and whether or not he has a right to be a member of the Union. If he does have the right to hire and fire, this is a violation of the Wagner Labor Act, and he must resign from the Union.

Erich said he could prove he does not hire and fire. Says he does not pay Social Security or have a license to do business.

It was moved by Fern Wingrove that we get legal advice upon this matter. The motion was seconded by J. V. Nesbit and carried.

Erich offered to resign from membership and his office in the Union if the Board of Directors found this to be necessary.

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RESPONDENT'S EXHIBIT 6-J

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLIDATED SEEDSMEN'S UNION

October 4, 1938

Page 1, Lines 8-10

There was a discussion regarding the membership of Erich Regan and it has been decided that he is eligible. This has been verified by legal advice.

## RESPONDENT'S EXHIBIT 6-K

EXCERPTS FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLIDATED  
SEEDSMEN'S UNION, INC.

October 17, 1938

Page 1, Lines 21-24.

Mrs. Hook and Mary Ann Miller were taken from their jobs, put on radio work at 33 cents an hour instead of 40 cents. Should they get their back wages? This is to be taken up with Mr. Meyberg.

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## RESPONDENT'S EXHIBIT 6-L

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOL-  
IDATED SEEDSMEN'S UNION

January 3, 1939

Page 2, Lines 18-22

Amos Kays said that Clyde Etheridge was not satisfied that he was promised work 9 hours a day and that he had only been working 8 hours, while non-union members were working much longer hours. Richard Luck is to see Mr. Clark and settle this question.

RESPONDENT'S EXHIBIT 6-M

EXCERPTS FROM MINUTES OF GENERAL  
MEETING OF CONSOLIDATED SEEDS-  
MEN UNION

September 26, 1939

Lines 8-1/2—12-3/4

The President mentioned the Petition that had been circulated in the Division #3 with the general request for a raise. There seemed to be only one person from that division present so very little more could be ascertained as to the exact desires of the members. Mr. Kadous explained that he had talked to Mr. Meyberg recently and had understood that a raise was possible for those who were in the lower salary bracket. He also explained that at the first of Nov. the State law would compel the Germain Seed & Plant Co. to cut the working hours down to 42 per week and that Mr. Meyberg had planned to cut them to 40 hrs. per week.

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RESPONDENT'S EXHIBIT 6-N

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOL-  
IDATED SEEDSMEN'S UNION

October 3, 1939

Lines 6, 7

The President mentioned the Petition which was signed by the members of one division and said that



practically all of the people who were entitled to a raise had received it.

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RESPONDENT'S EXHIBIT 6-O

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLIDATED  
SEEDSMEN'S UNION

June 4, 1940

Lines 27-29

A long discussion on the Union's status was held. Hazel Brown was mentioned as being out of work while non-union members were working.

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RESPONDENT'S EXHIBIT 6-P

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLIDATED  
SEEDSMEN'S UNION

November 6, 1940

Page 1, Lines 13½-14½

And

Page 1, Line 32—Page 2, Line 3

Miss Wingrove is to find out if Mr. Porter and Mr. Ganster are being placed in new positions *were-* in they will hire and fire.

(Page 1, Line 32—Page 2, Line 3)

It was brought to attention that Mr. Meyberg has not as yet answered the Board of Directors as to whether or not he will give a closed shop. As soon as all new membership cards are signed there is to be a meeting with Mr. Meyberg for a definite answer.

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RESPONDENT'S EXHIBIT 6-Q

EXCERPT FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLIDATED  
SEEDSMEN'S UNION, INC.

November 19, 1940

Page 2, Lines 1-11

The question of a closed shop was again brought up by Amos Kayes, which brought into discussion the new membership cards which every member of the Union has been asked to sign within the last month. Mr. John Epperson asked why the paragraph was changed and was told that the lawyer recommended it as a step in helping to attain a closed shop. Here Jack Butterfield stated that the lawyer said that the big mistake made in organizing the Union was not asking for and getting a closed shop. Robert Montgomery then made a motion and Tom Farley seconded it that the Directors again ask Mr. Meyberg regarding a closed shop. Motion carried.

## RESPONDENT'S EXHIBIT 6-R

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLI-  
DATED SEEDSMEN'S UNION

December 4, 1940

Page 1, Lines 12-15

and

Page 2, Lines 5-10; 17-20

Old business was asked for and it was reported by Fern Wingrove that after contacting Mr. Johnson for verification, that Mr. Ganster and Mr. Porter were not allowed Union membership since they have been vested with power to hire and fire.

(Page 2, Lines 5-10; 17-20)

The situation of a closed shop was again discussed and it was decided that on Mr. Meyberg's return, since he is now in the East, Jack Butterfield will see him for the purpose of setting a definite time to hold a meeting with the officers and Directors to clear up this situation, by getting his (Mr. Meyberg's) disposition regarding same.

(Page 2, Lines 17-20)

A motion was made by Fern Wingrove and seconded by Mr. Hook that Viola Gates mail checks in the amount of \$5.00 each to Margaret Hanna and Gertrude Pringle, this being the sick benefit given to all Union members in good standing.

RESPONDENT'S EXHIBIT 6-S

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLI-  
DATED SEEDSMEN'S UNION

January 8, 1941

Page 1, Lines 11-13

Mr. Butterfield reported that due to the holidays and business being so heavy, he hadn't had a chance to contact Mr. Meyberg in regards to his disposition regarding a closed shop.

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RESPONDENT'S EXHIBIT 6-T

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLI-  
DATED SEEDSMEN'S UNION

February 5, 1941

Page 1, Lines 20 $\frac{1}{2}$ -26 $\frac{1}{2}$

It was decided by all present that the best way to get the situation of a closed shop cleared up was to have a meeting with Mr. Meyberg and all Directors and officers, at a time to be set by him, (Mr. Meyberg). It was, therefore, decided that the plan to be followed was have a contract drawn up by the lawyer, Mr. Voorhees, which would be satisfactory to all, to be submitted at the meeting to be held in the Globe Coffee Shop.

## RESPONDENT'S EXHIBIT 6-U

EXCERPT FROM GENERAL MEETING OF  
THE MEMBERS OF THE CONSOLIDATED  
SEEDSMEN'S UNION, INC.

March 21, 1941

Lines 14-18

After a lengthy discussion in which every part of said contract was fully discussed and understood by all, a motion was made by Fern Wingrove and seconded by Al Hook that same contract be accepted as submitted with the exception of a few minor changes. Motion carried.

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## RESPONDENT'S EXHIBIT 6-V

EXCERPTS FROM MINUTES OF MEETING  
OF BOARD OF DIRECTORS OF CONSOLI-  
DATED SEEDSMEN'S UNION

April 1, 1941

Page 1, Lines 12-15

A Motion was made and carried to pay sick benefit to Nida Hansen, Otto Witt and Jim Neal.

In regards to the closed shop, Mr. Voorhees called Mr. Meyberg regarding a meeting suitable to him, Mr. Meyberg.



[Endorsed]: No. 10082. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Germain Seed and Plant Company, a corporation, Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed March 10, 1942.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10082

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

GERMAIN SEED AND PLANT COMPANY,  
Respondent.

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, petitioner in the above proceeding, and, in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those on which it intends to rely in this proceeding:

1. Upon the undisputed facts, the Act is applicable to respondent and to the employees herein involved:

2. The Board's findings of fact are fully supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

3. The Board's Order is wholly valid and proper under the Act.

Dated at Washington, D. C. this 6th day of March 1942.

NATIONAL LABOR RELATIONS  
BOARD

By ERNEST A. GROSS

Associate General Counsel

[Endorsed]: Filed Mar. 10, 1942. Paul P. O'Brien,  
Clerk.

No. 10082

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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GERMAIN SEED AND PLANT COMPANY, RESPONDENT

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

ROBERT B. WATTS,

*General Counsel,*

ERNEST A. GROSS,

*Associate General Counsel,*

GERHARD P. VAN ARKEL,

*Assistant General Counsel,*

MORRIS P. GLUSHION,

JOSEPH B. ROBISON,

SIDNEY L. DAVIS,

*Attorneys,*

*National Labor Relations Board.*

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FILED

JUN 23 1942

PAUL P. O'BRIEN,

CLERK



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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

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No. 10082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

GERMAIN SEED AND PLANT COMPANY, RESPONDENT

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*ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD*

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**JURISDICTION**

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondent pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Supp. V, Title 29, Sec. 151, *et seq.*). The jurisdiction of this Court is based upon Section 10 (e) of the Act. Respondent is a California corporation having its principal place of business in Los Angeles, California, and other establishments in various cities within California. The unfair labor practices occurred at respondent's warehouse and re-

tail store in Los Angeles, California, and its retail store and nursery in Van Nuys, California.

#### STATEMENT OF THE CASE

Upon proceedings had pursuant to Section 10 of the Act,<sup>1</sup> the Board, on December 31, 1941, issued its findings of fact, conclusions of law, and order (R. 132-167, 37 N. L. R. B. 1090), which may be briefly summarized as follows:

1. *Nature of respondent's business.*—Respondent, a California corporation, with its principal office and place of business in Los Angeles, California, is engaged in the growing, refining, purchasing, and selling of seeds, bulbs, plants, and nursery stock, and in the purchase and sale of insecticides, poultry, and garden supplies and remedies, hardware, and other similar products. It maintains commercial establishments in various cities within California. In 1940, about 17 percent of respondent's purchases, valued at approximately \$900,000, originated outside the State of California; about 24 percent of the products sold, amounting to approximately \$1,500,000, were shipped to points outside the State of California.

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<sup>1</sup> These included: Charge and amended charge filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 595, A. F. L., herein called the Union (R. 1-8); complaint (R. 8-14); motions to strike portions of complaint, to dismiss complaint, and for bill of particulars (R. 15-21); answer of respondent (R. 21-24); hearing before a Trial Examiner; brief of respondent; Intermediate Report of Trial Examiner (R. 25-56); and exceptions thereto by respondent (R. 57-131).



Purchases for the Los Angeles warehouse amounted to approximately \$719,860 in 1940, of which about 40 percent were shipped to the warehouse from out-of-State points; about 25 percent of the warehouse sales in 1940, amounting to approximately \$873,968, necessitated shipments out of State. Purchases made for the Los Angeles retail store in 1940 amounted to \$88,739, of which about 5 percent were received from out of State; about 2 percent of the retail store sales in 1940, amounting to \$158,393.50, necessitated shipments to points outside the State of California. Approximately 90 percent of the business of the Van Nuys retail store and nursery is handled through the Los Angeles warehouse (R. 136-138).

2. *The unfair labor practices.*—Respondent dominated and interfered with the formation and administration of Consolidated Seedmen's Union, Inc., herein called the Consolidated, and contributed support to it, and by these and other specified acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) and (2) of the Act (R. 138-165).<sup>2</sup>

3. *The Board's order.*—The Board ordered respondent to cease and desist from the unfair labor practices found, to withdraw all recognition from and completely to disestablish the Consolidated as the collective bar-

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<sup>2</sup> The relevant portions of the Act are printed in the Appendix, *infra*, pp. 25-26.

gaining representative of its employees, and to post appropriate notices (R. 165-167).

#### SUMMARY OF ARGUMENT

I. The National Labor Relations Act is applicable to respondent.

II. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

III. The Board's order is valid and proper under the Act.

#### ARGUMENT

##### POINT I

#### **The National Labor Relations Act is applicable to respondent**

Upon the facts set forth above (*supra*, pp. 2-3), which were stipulated by the parties (R. 56a-56d, 179-182), the applicability of the Act to respondent's operations is clear. *National Labor Relations Board v. Jones & Laughlin Steel Co.*, 301 U. S. 1, and companion cases; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453; *Virginia Electric and Power Company v. National Labor Relations Board*, 115 F. (2d) 414 (C. C. A. 4), approved in this respect, 314 U. S. 469; *North Whittier Heights Citrus Ass'n v. National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9), cert. denied, 310 U. S. 632, 724; *National Labor Relations Board v. Schmidt Baking Co.*, 122 F. (2d) 162 (C. C. A. 4).

## POINT II

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of section 8 (1) and (2) of the Act

## A. Formation of the Consolidated

Commencing about August 1937, the American Federation of Labor undertook organization of respondent's employees (R. 143; R. 256, 302).<sup>3</sup> When several employees, including Supervisors Vivian Nesbit and Daniel Hatfield,<sup>4</sup> discussed the activities of the union organizers with Purchasing Agent Walter P. Sage and expressed their desire to have a union of some kind, Sage suggested that "perhaps [they] would like to have a little independent union of [their] own" (R. 144, 145; R. 185, 186, 192), and put his suggestion into effect by calling a meeting of employees to "discuss the thing further" (R. 144; R. 187). The meeting was held in respondent's warehouse after working hours and was attended by 15 to 20 employees, including Sage, Dwight Gates, manager of the warehouse and mill room (R. 143; R. 190), Woolcott Hill, manager of the shipping department (R. 143; R. 189), and Supervisors Nesbit, Hatfield, Allen Hook, and Kenneth Luck (R. 142-144; R. 188-190, 302, 303). Sage, who pre-

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<sup>3</sup> References preceding the semicolons are to the findings of fact made in the Board's decision.

<sup>4</sup> We discuss below the Company's responsibility for the activities of its supervisory employees (*infra*, pp. 18-21).

sided, was the only speaker (R. 144; R. 192). He impressed upon the employees the fact that respondent would prefer a "house" union to an "outside" union, and warned them not to do anything which might jeopardize their jobs (R. 145, 146; R. 303, 304, 391, 392, 421). He then renewed his earlier proposal to form an "independent" union (R. 144, 145; R. 192). When the employees present agreed, he advanced the name of J. P. Voorhees as the "legal man to do that for [them]" (R. 145; R. 206).<sup>5</sup>

About 2 weeks later, Sage furthered the project thus launched by calling another meeting in respondent's warehouse, at which he introduced Voorhees, whom he had invited to attend (R. 146; R. 194, 195, 210). Voorhees spoke in favor of "independent" as against "outside" unions, and advised incorporation of the organization to be formed (R. 146; R. 211). He also stated that employees who had the right to hire, fire, or discipline, or were in executive positions, "did not have the right to belong to any union," and dismissed Managers Hill and Gates from the meeting when in-

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<sup>5</sup> The suggestion of specified legal counsel is a device frequently used by employers to control incipient organizations among their employees. See, *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 867, 868 (C. C. A. 2), cert. denied 304 U. S. 576; *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. (2d) 713, 718 (C. C. A. 3); *National Labor Relations Board v. J. Freezer & Son, Inc.*, 95 F. (2d) 840, 841 (C. C. A. 4); *National Labor Relations Board v. Ed Friedrich, Inc.*, 116 F. (2d) 888, 890 (C. C. A. 5); *National Labor Relations Board v. Falk Corp.*, 102 F. (2d) 383, 387 (C. C. A. 7), aff'd 308 U. S. 453.

formed of the nature of their respective duties (R. 146; R. 196, 197, 211). Sage, however, who was an executive (*infra*, pp. 18–19), was permitted to remain (R. 146; R. 197, 400, 401).<sup>6</sup> Supervisors Nesbit, Hatfield, Hook, and Luck also remained throughout the meeting (R. 146; R. 197).

Pursuant to a suggestion made at the meeting described above, an election was held in which the employees were given a choice between the C. I. O., the A. F. of L., an “independent” union, or having “Mr. Meyberg [respondent’s president] talk to us” (R. 146, 147; R. 283, 297, 309, 312). The election was held in the plant during working hours (R. 146; R. 310, 313, 394, 423, 545). Supervisory employees assisted in arranging the details of, and conducting, the balloting (R. 147; R. 284, 296, 297, 310, 313, 394, 423); the ballots were thereafter counted in respondent’s warehouse by a committee which included Supervisors Nesbit and W. S. Clark (R. 147; R. 285, 287).<sup>7</sup> Of 102 ballots cast, 45 were for an “independent” union (R. 147; R. 287).<sup>8</sup>

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<sup>6</sup> Sage did not withdraw from the movement to form an “independent” union until, as noted below, the Consolidated had been incorporated (*infra*, p. 9).

<sup>7</sup> Clark was in charge of the nursery (R. 142; R. 256, 372, 373). He was included among management representatives invited by the Consolidated to attend a dinner meeting on May 2, 1939 (R. 142; R. 567, 568).

<sup>8</sup> Efforts of an employer to counteract or mold employee desires by the device of a company sponsored election have been regularly condemned as violative of the Act. *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 62 S. Ct. 608, reversing 116 F. (2d) 350, 351 (C. C. A. 7) and enforcing 13 N. L. R. B. 338; *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 785–786 (C. C. A. 9), cert. denied 312 U. S. 678; *Titan Metal Mfg. Co. v. National Labor*



Although the election failed to show a majority for their proposal, the sponsors of an "inside" union continued their organizational activities. A "pre-organizational" committee composed of seven employees of various departments, including Supervisors Clark, Luck, Hook, and Harold Frauenberger, and Dorothy Turton, private secretary to W. J. Schoenfeld, respondent's vice president (R. 148; R. 373, 409), circulated petitions, on or about September 1, 1937, designating themselves as "a committee to formulate an independent union" and to represent the employees for the purpose of collective bargaining (R. 148; R. 216, 445, 446). These activities were carried on in the warehouse during working hours (R. 148; R. 315, 445). Example was set for the employees when the petitions were signed by Purchasing Agent Sage, Dorothy Turton, Supervisors Clark, Nesbit, Hatfield, Hook, Frauenberger, and Luck, O. E. Johnson, assistant manager of the Los Angeles retail store, and Stanley Williams, assistant to respondent's secretary treasurer (R. 148-149; R. 216-217, 373).

On September 9, 1937, the "pre-organizational" committee met and executed articles incorporating Con-

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*Relations Board*, 106 F. (2d) 254, 260 (C. C. A. 3), cert. denied 308 U. S. 615; *National Labor Relations Board v. Crystal Spring Finishing Co.*, 116 F. (2d) 669, 672 (C. C. A. 1); *National Labor Relations Board v. American Mfg. Co.*, 106 F. (2d) 61, 65-66 (C. C. A. 2), aff'd 309 U. S. 629; *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), cert. denied 304 U. S. 576; *National Labor Relations Board v. New Era Die Co.*, 118 F. (2d) 500, 503, 504 (C. C. A. 3); *National Labor Relations Board v. Colten*, 105 F. (2d) 179, 181, 182 (C. C. A. 6); *National Labor Relations Board v. Christian Board of Publication*, 113 F. (2d) 678, 680, 682 (C. C. A. 8).

solidated Seedmen's Union, Inc. (R. 149; R. 446-448). Thereafter the incorporators, a majority of whom, as we have noted, were supervisors (*supra*, p. 8), became the Consolidated's first Board of Directors (R. 149; R. 218, 219).<sup>9</sup>

Shortly after the Consolidated was incorporated, a meeting of employees was held at the Los Angeles retail store at which several employees questioned the right of Purchasing Agent Sage to belong to the Consolidated in view of his supervisory or executive position; as Voorhees testified, "since they felt he was in that position \* \* \* that he had no right in the meeting whatsoever," Sage was asked to leave (R. 149; R. 212, 213). With the Consolidated entrenched and his purpose accomplished, Sage withdrew (R. 198-200).

On October 1, 1937, respondent, on the basis of the "pre-organization" petitions (*supra*, p. 8) and membership applications, recognized the Consolidated as the exclusive representative of its employees at the Los Angeles and Van Nuys establishments (R. 151; R. 458-460). Thereafter, most of the supervisory employees and other representatives of management who had been instrumental in the formation of the Consolidated continued to play an active role in its administration. Frauenberger was its president from September 1937

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<sup>9</sup> The Articles of Incorporation of the Consolidated designated Clark, Hook, Turton, Frauenberger, and Luck as five of the seven Directors (R. 218-219). At the first meeting of the Board of Directors, on September 20, 1937, Clark, Hook, and Turton resigned (R. 223). They were replaced by Supervisor Hatfield and two others (R. 223). Hook and Turton continued to play active parts in the Consolidated (*infra*, pp. 9-10).

to April 1938; Luck from April 1938 to April 1939; and Hook occupied that office at the time of the hearing before the Board in April 1941. Turton was secretary until she left respondent's employ in June 1938, and Violet Ashley, who succeeded Turton as private secretary to respondent's vice-president (R. 409), served as secretary of the Consolidated until November 1938. The directors since the beginning of 1938 have included, at various times, Supervisors Luck, Hook, Hatfield, Nesbit, and Frauenberger (R. 150; R. 263).

#### B. Bargaining activities of the Consolidated

During the years which followed respondent's recognition of the Consolidated in 1937, the complacency and subservience of the bargaining agency which it forced upon its employees were amply demonstrated. After securing from respondent, shortly after recognition, some concessions including wage increases, the officials of the Consolidated, as we shall show, consistently refused over a period of more than two years to present to respondent for consideration urgent employee demands for further wage increases. At no time did they request the execution of a written contract embodying those concessions which respondent did make.

After recognition by respondent on October 1, 1937 (*supra*, p. 9), the Consolidated sent to Meyberg, respondent's president, a list of 20 "suggestions" regarding working conditions (R. 152; R. 325-327, 462, 463). Respondent granted most of these and granted also raises varying from 5 to 18 percent (R. 150; R. 325-330, 467, 470-476). No effort was made by the Consolidated to secure an agreement embodying any of

these terms (R. 153; R. 657). Although, on October 14, the Consolidated informed respondent that it had been authorized by the employees to "proceed with making definite agreements," nothing further was done to secure a binding commitment from the management (R. 152, 153; R. 657). The concessions granted thus continued to rest on respondent's sufferance. When, in August 1940, an employee proposed at a Consolidated meeting that an attempt be made to obtain a signed agreement, the president stated simply that "we could not get it" (R. 153, n. 12; R. 359).

Despite the raises granted in 1937, dissatisfaction with the wage scale continued. The officers of the Consolidated, however, refused to concern themselves with the situation. In February 1938, a petition was presented to the Consolidated on behalf of a group of employees calling for, among other things, \$100 per month as a minimum wage for common labor (R. 153; R. 522, 523). The Board of Directors of the Consolidated declined to take action on this request (R. 153; R. 524, 525). Again on August 20, 1940, Eric Hulphers, a member of the Consolidated, demanded action on the petition (R. 153; R. 358). Nothing was done, and members of the Consolidated were told by their representatives that "it was absolutely impossible to get a raise" (R. 154; R. 640, 641).

The bankruptcy of the Consolidated having been demonstrated, a number of the employees decided to take matters into their own hands.<sup>10</sup> In the first week

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<sup>10</sup> The minutes of the Consolidated meeting held on August 20, 1940, at which action on wage increases had been demanded, show that "The men said they are willing to give this Union a chance. If they couldn't produce the desired conditions the men would join another union" (R. 358).



of September 1940, Employees Hulphers, Loy, and R. H. Montgomery approached President Meyberg and informed him that they had not been able to obtain satisfaction through the Consolidated, that there was unrest among the employees, and that they wished to consult him before taking any further steps (R. 154; R. 333, 334, 630-632). Meyberg suggested that the employees meet with him later that day and asked that, in the meantime, the men prepare a petition embodying their demands (R. 154; R. 334, 335, 632). The meeting with Meyberg was held and two petitions for wage increases were presented (R. 154, 155; R. 350, 351, 357, 600, 601, 638). Neither of the petitions had been authorized by the Consolidated; the move for wage increases was supported alike by members and nonmembers of that organization (R. 155; R. 334, 350, 361, 642), which, as we have noted, had refused to act in the matter (*supra*, p. 11).

At the meeting with Meyberg, Hulphers reiterated the substance of what had been told Meyberg earlier in the day and added that the employees were "now taking steps to join outside unions" (R. 155; R. 335, 336).<sup>11</sup> Meyberg then invited the male employees to have dinner with him at a later date, at which time the matter could be further discussed (R. 155; R. 337, 633).

On September 17, Meyberg met with the men at the plant after having taken them to dinner (R. 155; R. 338,

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<sup>11</sup> The day before the meeting with Meyberg, several employees had signed applications for membership in the Union (R. 154; R. 332, 333).



339, 633). Both members and non-members of the Consolidated were present (R. 155; R. 349, 361). Meyberg, although recognizing that the Consolidated had not presented any demands for wage increases, told the men that whatever concessions he granted would be handled through the Consolidated (R. 156; R. 341, 342, 636). He also asserted that they were "one happy family," and suggested that before the employees "do anything, before [they] call the doctor in," they ought to give him "a chance to do something." His diagnosis concluded with "Maybe you have got the wrong ailment. Maybe you won't need the doctor" (R. 155, 156; R. 342, 636). It is clear, as the Board found, that by the "doctor" Meyberg meant the Union (R. 156; R. 342).

Meyberg at once proceeded to supply his own prescription for the virus with which his employees appeared to be afflicted. On October 3, 1940, he granted wage raises and, in keeping with his announced intention (*supra*), apprised the employees of his action by notices sent to the Consolidated (R. 156; R. 590-592, 648, 649, 661, 662). That organization was thereby given the credit for a substantial benefit which it had refused to seek itself, on the ground that wage raises were "impossible" (*supra*, p. 11). Thus, respondent, using the frequently condemned device of "tying in," gave the Consolidated vital support by concealing its inherent ineffectiveness with a camouflage of activity. *Western Union Telegraph Co. v. National Labor Relations Board*, 113 F. (2d) 992, 995 (C. C. A. 2); *National Labor Relations Board v. Falk Corporation*, 102 F.

(2d) 383, 388 (C. C. A. 7), aff'd 308 U. S. 453, 460, 461; *National Labor Relations Board v. American Potash & Chemical Corp.*, 98 F. (2d) 488, 494 (C. C. A. 9), cert. denied 306 U. S. 643; *Titan Metal Mfg. Co. v. National Labor Relations Board*, 106 F. (2d) 254, 259 (C. C. A. 3), cert. denied 308 U. S. 615; *National Labor Relations Board v. Christian Board of Publication*, 113 F. (2d) 678, 683 (C. C. A. 8).

#### C. Respondent's financial and other support of the Consolidated

We have seen that respondent freely lent its facilities to the organizers of the Consolidated during its formative stages. Thus the first meetings called by Sage were held on Company premises (*supra*, pp. 5-6), the election was conducted in the plant during working hours (*supra*, p. 7), and the petitions calling for the formation of "an independent union" were circulated also during working hours (*supra*, p. 8). This type of Company support continued after the Consolidated was recognized. The testimony of numerous witnesses shows that the Consolidated solicited members and customarily collected dues during working hours on respondent's premises (R. 158, 159; R. 323-325, 396, 397, 424-426, 606, 607, 620, 621, 629); that notices of meetings were regularly posted over the time clocks in various divisions (R. 159; R. 267, 288, 397, 407, 410); that the secretary of the Consolidated frequently advised the Board of Directors of meetings by use of respondent's telephone during working hours (R. 159; R. 410); and that, on occasion, the Board of Directors of the Consolidated held meetings in the warehouse (R. 159; R. 292, 520). These activities in the plant were

open and notorious; the Board was clearly justified in finding, as it did, that they had "the tacit consent" of respondent (R. 159).

In May 1938, when the Consolidated held a picnic, Meyberg granted it the use of respondent's truck, contributed \$10 toward the picnic, and paid a fine incurred by the driver of the truck (R. 158; R. 265, 562-564, 652, 653). The Consolidated responded with a letter thanking respondent for its "very generous financial aid and support" (R. 158; R. 564, 565). In July 1938, respondent again lent its truck to the Consolidated for a social function (R. 158; R. 565, 566, 567), and in October 1938 gave it the use of the shipping floor in the warehouse for a dance (R. 158; R. 558).

It requires no citation of authority to demonstrate the illegality of the material support thus afforded the Consolidated by respondent.

#### D. Respondent's manifestation of preference for the Consolidated over the Union

The record affirmatively establishes that in conferring the many favors upon the Consolidated which are described above, respondent was prompted by a preference for that organization over the Union. Meyberg made respondent's position in this respect clear when in May 1939 he was asked by Hook whether he, Hook, would be laid off if he did not pay dues to the Consolidated. Meyberg advised him "to keep harmony in the firm, it is better to join the union [Consolidated], the fifty cents a month doesn't break you \* \* \* it is best to join, to keep paying your dues" (R. 157; R. 504, 505). On the other hand, when Manager Hill learned

that employee Jack Thrift belonged to the Union (R. 157; R. 608), he urged Thrift to withdraw and stated that "all these unions are a bunch of leeches. They feed off the efforts of others. You belong to the C. S. U. [the Consolidated] as well, they are taking care of you whereas the dues you are paying into the A. F. of L. is doing you no good. We don't want the A. F. of L. in here or any other union" (R. 157, 158; R. 608, 609). These "intimations of preference" were clearly illegal, *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 78.

Respondent also announced its position to its employees generally in a more formal manner. As the employees were leaving one of the organizational meetings held early in the campaign for the formation of the Consolidated (*supra*, pp. 5-6), they were handed a "Statement of Facts," signed by Meyberg (R. 149; R. 258). The statement asserted, *inter alia*, that the employees "do not have to join any labor union" or "pay dues, levies, nor [sic] any kind of tribute to any organization or group to hold your job." It added that respondent's operations were carried on "in a spirit of friendly acquaintanceship," that "there are no inaccessible 'bosses,'" that "everyone knows everyone else," and that "we like to feel that we work with, not against, each other" (R. 149-151; R. 259, 260). The Board concluded that through this statement, delivered at a time when certain "accessible bosses" were busily engaged in organizing an "independent" union, respondent made amply clear to its employees that it would not look with favor upon their affiliation with an "outside" union



(R. 161). When viewed in this setting, the Board's conclusion, "based upon a complex of activities" (*National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, 477), that the distribution of the "Statement of Facts" constituted a violation of the Act, was clearly proper. *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 78; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 588-590; *National Labor Relations Board v. Pacific Gas and Electric Company*, 118 F. (2d) 780, 788 (C. C. A. 9); *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9), cert. denied 312 U. S. 678; *National Labor Relations Board v. Chicago Apparatus Company*, 116 F. (2d) 753, 756, 757 (C. C. A. 7); *National Labor Relations Board v. New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3).

**E. Conclusion as to respondent's violation of Section 8 (1) and 8 (2)**

The failure of the Consolidated to act as a bona fide representative of its members when the occasion demanded (*supra*, pp. 10-11), respondent's attempt to conceal that failure by giving the Consolidated credit for raises which it had refused to seek (*supra*, p. 13), respondent's grant to that organization of extensive financial and other support (*supra*, pp. 14-15), and its contemporaneous expressions of hostility to the Union (*supra*, pp. 5-6, 15-17), expose the illegality of respondent's domination, control, and support of the union which it formed. In addition, the record clearly shows that the Consolidated was conceived, formed, supported,



and controlled by persons for whose activities respondent bears full responsibility.

Respondent does not question the supervisory status of Managers Hill and Gates, who attended and lent their prestige to the first two organizational meetings called by Sage (*supra*, pp. 5-7). Similarly it is not denied that Clark, who was in charge of respondent's Van Nuys nursery (*supra*, p. 7, n. 7), was in a position of authority. Clark was a member of the committee which organized and incorporated the Consolidated; he subscribed, and took an active part in securing the signatures of employees, to the petition authorizing that committee to act (*supra*, pp. 8-9).

Sage, who organized the movement to form an "independent" union and who played a dominant role in that movement, remaining active until the Consolidated was incorporated (*supra*, pp. 5-9), was likewise a representative of management. Respondent's contention to the contrary is without merit. Sage had been employed by respondent for 22 years; he had served 12 years as traffic manager and superintendent of the Los Angeles warehouse, and in 1937 was purchasing agent for the "sundries department" of the warehouse (R. 139; R. 183-185). He was included in the group of officials and top management representatives who attended respondent's weekly meetings of "department managers" (R. 139; R. 667). There can be no doubt that the employees had "just cause to believe" that he was "acting for and on behalf of the management." *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 80. That they did in fact so believe is

shown by their demand, after the Consolidated was incorporated, that he refrain from further participation in the affairs of that organization (*supra*, p. 9).

Although Hill, Gates, Sage, and Clark withdrew, at various stages, from the group sponsoring an independent union, they had already clothed that movement with prestige by acts which respondent never later repudiated. It is clear that the Consolidated came into existence under "conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 588. Furthermore, the aura of company approval and support, once established, was maintained after the withdrawal of these highly placed officials by the continued activity of a large group of lesser supervisors and others, "emulating the example set by the management."<sup>12</sup> The Board's finding that this activity is attributable to respondent is unassailable.

As we have seen, Nesbit, Hatfield, Hook, Luck, and Frauenberger actively participated in the formation of the Consolidated and, after it had been firmly established, continued to play an active part in its administration (*supra*, pp. 5, 7-10). The record establishes that they exercised general authority over the employees. Nesbit was in charge of and directed the work

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<sup>12</sup> *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 81.

and controlled by persons for whose activities respondent bears full responsibility.

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Sage, who organized the movement to form an "independent" union and who played a dominant role in that movement, remaining active until the Consolidated was incorporated (*supra*, pp. 5-9), was likewise a representative of management. Respondent's contention to the contrary is without merit. Sage had been employed by respondent for 22 years; he had served 12 years as traffic manager and superintendent of the Los Angeles warehouse, and in 1937 was purchasing agent for the "sundries department" of the warehouse (R. 139; R. 183-185). He was included in the group of officials and top management representatives who attended respondent's weekly meetings of "department managers" (R. 139; R. 667). There can be no doubt that the employees had "just cause to believe" that he was "acting for and on behalf of the management." *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 80. That they did in fact so believe is

shown by their demand, after the Consolidated was incorporated, that he refrain from further participation in the affairs of that organization (*supra*, p. 9).

Although Hill, Gates, Sage, and Clark withdrew, at various stages, from the group sponsoring an independent union, they had already clothed that movement with prestige by acts which respondent never later repudiated. It is clear that the Consolidated came into existence under "conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 588. Furthermore, the aura of company approval and support, once established, was maintained after the withdrawal of these highly placed officials by the continued activity of a large group of lesser supervisors and others, "emulating the example set by the management."<sup>12</sup> The Board's finding that this activity is attributable to respondent is unassailable.

As we have seen, Nesbit, Hatfield, Hook, Luck, and Frauenberger actively participated in the formation of the Consolidated and, after it had been firmly established, continued to play an active part in its administration (*supra*, pp. 5, 7-10). The record establishes that they exercised general authority over the employees. Nesbit was in charge of and directed the work

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<sup>12</sup> *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 81.



of the other employees on the fourth floor of the warehouse; his immediate superiors were Managers Hill and Gates (R. 139, 140; R. 272, 273, 388-390, 628). Hatfield directed the work of one or more helpers and had authority to direct other employees to work for him when occasion demanded; he was responsible for the proper filling of seed orders (R. 141; R. 509-511). Hook operated the mill on the sixth floor of the warehouse and his duties also required him to relay the orders of Manager Gates to the employees on the sixth floor as well as to the "bull gang," to assign work, to be responsible for its proper performance, and to guide and instruct the men (R. 141; R. 478, 479, 484, 486). Luck was the head of the bulb department and inspected the work of the three or four employees who worked under him during the busy season which normally covered 7½ months during the year (R. 140; R. 540, 577, 583, 585). Luck also had authority to recommend persons for hire and discharge (R. 140, 141; R. 577). Frauenberger was in charge of city shipping (R. 139; R. 651). He was charged with the duty of relaying Manager Hill's orders to the truck drivers, assigning and directing work, helping load the trucks, checking out the loads, and attending to complaints concerning deliveries (R. 139; R. 383-385, 432-433).

On these facts, the test of employer responsibility is fully met. The subforemen described above were "in a strategic position to translate to their subordinates the policies and desires of the management." *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 80. See also *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584,



599; *H. J. Heinz v. National Labor Relations Board*, 311 U. S. 514, 520, 521; *National Labor Relations Board v. Pacific Gas and Electric Co.*, 118 F. (2d) 780, 786-788 (C. C. A. 9).

Respondent is likewise accountable for the activities of Turton, strategically placed as secretary of the Consolidated (*supra*, p. 10). The Board's finding that "as private secretary of the respondent's vice president, Turton \* \* \* occupied a confidential position which allied her closely with the respondent, and gave employees just cause to believe that she represented the management" (R. 148, n. 8) is clearly justified. *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72, 80; *National Labor Relations Board v. American Mfg. Co.*, 106 F. (2d) 61, 68 (C. C. A. 2), *aff'd* 309 U. S. 629. The same considerations apply to the dual activities of Ashley, Turton's successor in both of her positions (*supra*, p. 10).

On all of the foregoing facts, the Board's conclusion that respondent illegally dominated, interfered with, and supported the Consolidated in violation of Section 8 (2) of the Act, is amply supported.

By dominating, interfering with, and supporting the Consolidated, respondent violated Section 8 (1) as well as Section 8 (2) of the Act.<sup>13</sup> In addition, President Meyberg's advice to an employee to retain his mem-

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<sup>13</sup> *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267, 268; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 231; *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 251, 252.

bership in the Consolidated (*supra*, p. 15), Manager Hill's disparagement of the Union (*supra*, pp. 15-16), respondent's issuance of the "Statement of Facts" under the circumstances disclosed (*supra*, pp. 16-17), and its act of crediting the Consolidated with a wage increase in the face of the employees' threatened adherence to an "outside" union (*supra*, pp. 11-13), all constituted separate violations of Section 8 (1). The Board's findings to this effect (R. 163) are plainly warranted. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *International Ass'n of Machinists v. National Labor Relations Board*, 311 U. S. 72; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584; *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), cert. denied, 312 U. S. 678; *National Labor Relations Board v. Pacific Gas and Electric Co.*, 118 F. (2d) 780 (C. C. A. 9); *Ritzwoller Co. v. National Labor Relations Board*, 114 F. (2d) 432 (C. C. A. 7).

### POINT III

#### The Board's order is valid and proper under the Act

The cease-and-desist provisions of the Board's order are mandatory under Section 10 (c) of the Act. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. The Supreme Court's decision in *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, requires no modification of paragraph 1 (c) of the order, which

directs respondent to cease and desist from "in any other manner" interfering with the exercise by its employees of the rights guaranteed in Section 7 of the Act. The respondent's separate and distinct violations of Section 8 (1) (*supra*, pp. 21-22) as well as its wholesale violation of Section 8 (2), establish the propriety of the general injunctive order under the principles laid down in the *Express Publishing* case, as construed in subsequent decisions of this and other Courts. *National Labor Relations Board v. Pacific Gas and Electric Co.*, 118 F. (2d) 780, 789-791 (C. C. A. 9); *Oughton v. National Labor Relations Board*, sur settlement of decree, April 4, 1941, 8 L. R. R. 209 (C. C. A. 3); *National Labor Relations Board v. Stehli & Co.*, 125 F. (2d) 705 (C. C. A. 3), enforcing 35 N. L. R. B., No. 12; *Wilson & Co. v. National Labor Relations Board*, 126 F. (2d) 114, 117 (C. C. A. 7), enforcing 31 N. L. R. B., No. 69; *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F. (2d) 874, 890-891 (C. C. A. 1), cert. denied 313 U. S. 595; *American Enka Corp. v. National Labor Relations Board*, 119 F. (2d) 60, 63 (C. C. A. 4). Since the decision in the *Express* case, the Supreme Court has repeatedly enforced general cease and desist orders. *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 62 S. Ct. 608, enforcing 13 N. L. R. B. 338, 362; *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 62 S. Ct. 846, enforcing 18 N. L. R. B. 591, 640; *Westinghouse Electric & Mfg. Co. v. National Labor Relations Board*, 312 U. S. 660, enforcing in this respect 18 N. L. R. B. 300, 319; *Phelps*

*Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, enforcing in this respect 19 N. L. R. B. 547, 603.

The propriety of the requirement that respondent withdraw recognition from and disestablish the Consolidated and post appropriate notices (R. 166-167), is well established.

#### CONCLUSION

It is respectfully submitted that the National Labor Relations Act is applicable to respondent, that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue enforcing the order in full as prayed in the Board's petition.

ROBERT B. WATTS,  
*General Counsel,*

ERNEST A. GROSS,  
*Associate General Counsel,*

GERHARD P. VAN ARKEL,  
*Assistant General Counsel,*

MORRIS P. GLUSHIEN,

JOSEPH B. ROBISON,

SIDNEY L. DAVIS,

*Attorneys,*  
*National Labor Relations Board.*

## APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the right's guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it:

\* \* \*

\* \* \* \* \*

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. \* \* \*

\* \* \* \* \*

(c) \* \* \* If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including



reinstatement of employees with or without back pay, as will effectuate the policies of this Act. \* \* \*

\* \* \*

\* \* \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States \* \* \* wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order \* \* \* and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power \* \* \* to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. \* \* \*

No. 10082.

IN THE

United States Circuit Court of Appeals  
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*Petitioner,*

*vs.*

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*Respondent.*

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD.

---

BRIEF FOR RESPONDENT GERMAIN SEED  
AND PLANT COMPANY.

---

LATHAM & WATKINS,

By PAUL R. WATKINS,

By RICHARD W. LUND,

1112 Title Guarantee Building,

411 West Fifth Street,

Los Angeles, California,

*Attorneys for Respondent.*

FILED

AUG - 5 1942

PAUL F. O'BRIEN,  
CLERK



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IN THE

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---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD.

---

BRIEF FOR RESPONDENT GERMAIN SEED  
AND PLANT COMPANY.

---

## Jurisdiction.

This case is before the Court on petition of the National Labor Relations Board for enforcement of its order issued against respondent pursuant to Section 10(c) of the National Labor Relations Act [49 Stat. 449 (1935), 29 U. S. C. Secs. 151-166 (Supp. II, 1936)]. The jurisdiction of this court is based upon Section 10(e) of the Act. Respondent is a California corporation having its principal place of business in Los Angeles, California, where

the alleged unfair labor practices are asserted to have occurred.

The decision and order of the Board (37 N. L. R. B., No. 190, p. 1090) is set forth at pages 132-167 of the record and the complaint issued by the Board under which it held hearings and entered its order and respondent's answer thereto are set forth at pages 8-14 and 21-24, respectively, of the record.

### Statement of the Case.

On December 31, 1941, the Board issued its Decision, Findings of Fact, Conclusions of Law, and Order [37 N. L. R. B. No. 190, p. 1090, R. 132-167]. Its Findings and Conclusions may be briefly summarized as follows: Respondent dominated and interfered with the formation and administration of Consolidated Seedmen's Union, Inc. (hereinafter referred to as Consolidated), and contributed support to it, and by these and other acts, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby violated Sections 8(1) and (2) of the Act. The Board ordered respondent [R. 165-167] to cease and desist from dominating and interfering with the administration of or contributing financial or other support to Consolidated or any other labor organization, from recognizing Consolidated, and from in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively

through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act. The Board further ordered respondent to withdraw all recognition from and completely disestablish Consolidated, and post appropriate notices.

On March 10, 1942, the Board filed with this Court its petition for enforcement of its order [R. 167-172]. On March 26, 1942, respondent filed its answer to the petition [R. 173-175]. In said answer, respondent challenges the sufficiency of the evidence to support the Board's above mentioned Findings and Conclusions and questions the propriety of the Board's Order.

Respondent does not question the applicability of the National Labor Relations Act to its operations or the jurisdiction of the Board over respondent.

The pertinent provisions of the National Labor Relations Act are set forth in Appendix "A", *infra*, p. 47.



## ARGUMENT.

### I.

**The Board's Findings of Fact From Which It Concludes Respondent Has Violated Sections 8(1) and (2) of the Act Are Not Supported by Substantial Evidence.**

#### A. FORMATION OF THE CONSOLIDATED.

The account in petitioner's brief of the events leading up to the formation of the Consolidated union is incomplete and therefore, we believe, misleading. We deem it necessary, therefore, to set forth more fully herein the circumstances which preceded the organization of the Consolidated. Prior to detailing these facts, it should be noted that the Board's case rests primarily on the activities of certain employees, all of whom are deemed by petitioner to be supervisory employees for whose actions respondent is responsible. Those individuals are Dwight Gates, Woolcott Hill, W. S. Clark, Walter P. Sage, Vivian Nesbit, Daniel Hatfield, Allen Hook, Kenneth Luck and Harold Frauenberger. In addition, the Board contends that respondent is chargeable for the activity of Dorothy Turton, secretary to respondent's vice-president. It is our contention that only Gates and Hill held positions which identified them with the management and that their activity did not interfere in any way with the rights of respondent's employees under the Act. We will later discuss (*infra*, pp. 16-29) in detail the position of these employees, and in the discussion immediately following we will refer to every bit of activity on their part which the petitioner deems to have been in violation of the Act.

In August of 1937, a local of the American Federation of Labor began a campaign of organization among re-

spondent's warehouse employees. A number of respondent's employees, including Nesbit and Hatfield, at different times approached Sage, a purchasing agent in the sundries department, and discussed with him the desirability of forming or joining a union [R. 185, 187]. Finally, his response was, "You fellows keep running to me about this thing. Now, you must want to do something about it. Now, would you care to meet with me and let us discuss this thing and see what you have on your mind." They said that they would and that "they were waiting for someone to get them together and have a talk with them" [R. 204]. Accordingly, Sage told certain employees to ask the others if they wanted to hold a meeting on a Saturday afternoon [R. 188].

The meeting was held one Saturday afternoon, after working hours, about the middle of August on the warehouse shipping floor. As testified to by Board witness Kadous, a CIO member [R. 301] who had not been an employee of respondent for over a year prior to the hearing [R. 278], having been discharged by Meyberg, respondent's president, at a time when he was president of Consolidated [R. 654], at this meeting Sage "spoke in regard to forming a union, and he brought up, well, the organization that they used to have there, and he thought it would be a very fine thing if we could form something of that order at this time, and as far as I could see, most of them agreed with him" [R. 281].<sup>1</sup> The organization to which Sage referred was the Germain Improvement

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<sup>1</sup>In its brief (p. 6) petitioner states that Sage "impressed upon the employees the fact that respondent would prefer a 'house' union to an 'outside' union, and warned them not to do anything which might jeopardize their jobs." We will discuss hereinafter (*infra*, p. 18), the testimony upon which this statement is based.

Association which had been in existence a number of years earlier. He had been a member of that association and had found it to be a desirable form of organization [R. 186]. The majority of those present expressed themselves as desiring an inside union [R. 191-193, 281]. Sage stated that if they were going to form a union they should have an attorney do it for them, and the group asked that he obtain someone [R. 206, 305].<sup>2</sup> While Sage was the only speaker *as such*, there was general discussion among those present [R. 392, 543-544, 581].

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<sup>2</sup>In its brief (p. 6), petitioner observes that "The suggestion of specified legal counsel is a device frequently used by employers to control incipient organizations among their employees." This statement may be true, but whether it is true as applied to a particular case depends on whether in fact the employer involved suggested the name of an attorney in order to direct the organizational efforts of his employees. There was no such evidence in the instant case, and no basis for even making such an inference. The decisions cited by petitioner certainly are not applicable herein. In *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. (2d) 713, 718 (C. C. A. 3rd, 1939), the plant manager recommended an attorney to the employees and said he would take care of the fees, as he did; in *National Labor Relations Board v. Ed. Friedrich, Inc.*, 116 F. (2d) 888, 890 (C. C. A. 5th, 1940), the company called a meeting of the employees at which the general superintendent introduced an attorney invited by him to attend who then read to the assembled employees the articles of an inside union at a plant for which he was counsel, which articles were then adopted with minor modifications; in *National Labor Relations Board v. Falk Corp.*, 102 F. (2d) 383, 386-387 (C. C. A. 7th, 1939) aff'd 308 U. S. 453, 60 S. Ct. 307, 84 L. Ed. 396 (1940), the company president suggested an attorney to a committee forming an inside union, arranged a meeting with him, and the committee agreed to conceal who suggested the attorney; in *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 867, 868 (C. C. A. 2d, 1938) cert. den. 304 U. S. 576, 58 S. Ct. 1046, 82 L. Ed. 1540 (1938), application cards for an inside union were prepared by the company's attorney; and in *National Labor Relations Board v. J. Freezer & Son, Inc.*, 95 F. (2d) 840, 841 (C. C. A. 4th, 1938), the company's attorney obtained the charter for the inside union. In none of the foregoing cases did the court discuss the significance of the suggestion of the name of or use of the services of the attorney involved, and each of the cases is distinguishable from the instant one on many different grounds.

While Hill, manager of the shipping department, and Gates, manager of the warehouse and mill room [R. 189, 190], and Nesbit, Hatfield, Hook and Luck were present at this meeting, there was no evidence that Hill or Gates said a word, and the testimony does not disclose what, if anything, the other four said. In arranging the meeting, Sage acted on his own. He at no time received any suggestions or instructions from any one connected with the management of respondent with regard to the holding of that meeting or the formation or desirability of an independent union [R. 649-650, 653].

As requested by the employees at the first meeting, Sage arranged for an attorney, Voorhees, to attend a meeting of the men at the warehouse about two weeks later on a Saturday afternoon, after working hours. Sage introduced Voorhees by stating that "they had requested me to bring a legal man to them, and that I had done so, and wished to present Mr. Voorhees" [R. 195]. Though he remained, Sage did not thereafter participate in the meeting [R. 195, 197]. Voorhees informed the men of their "right to form or join any union that they pleased, without the employer having any voice in the matter, and that they had a right to belong to any organization that they might desire, that they could form an independent union if they wished" [R. 210-211]. He then discussed generally independent unions, and introduced the secretary and business agent of the independent union at Cudahy Packing Company who spoke [R. 211-212, 309, 422]. Early in the meeting, Voorhees stated that "the only persons eligible to belong to a union were the workers, and that those who had the right to hire or fire or discipline employees, or who were in executive positions, did not have the right to belong to any union" [R. 211]. Hill and Gates were



informed they were not eligible, and the men agreed that they should leave the meeting, and they did [R. 196-197, 211, 306-307, 482]. No similar demand was made that Nesbit, Hatfield, Hook or Luck, who were not quoted as saying a single word at the meeting, or Sage withdraw. During the course of the meeting various employees suggested that an election be held to determine the wishes of everyone and Voorhees advised them it would be proper to hold an election so everyone would be satisfied [R. 423]. The employees then agreed to hold such an election [R. 296, 297, 483].

Two or three days later the employees, without obtaining consent of the management [R. 296], held a secret ballot election at the warehouse, the Hill Street store and the Van Nuys ranch. Each employee personally deposited his ballot in one of the ballot-boxes [R. 394]. The ballot provided for a choice of CIO, AFL, Independent, or "Have Mr. Meyberg talk to us", in that order [R. 283]. The fourth choice was placed on the ballot because it was the feeling of some of the employees that they did not know enough about the union situation and that therefore they should ask Meyberg to talk to them [R. 544], and perhaps they could that way get desired wage increases without forming any union [R. 300-301]. The results of the election were as follows [R. 287]: CIO: 3; AFL: 33; Ind. Union: 45; Meyberg: 11; spoiled ballots: 10. In its brief (p. 7), petitioner contends that "supervisory" employees arranged the details of the election and helped count the ballots. The evidence merely establishes that



Hook was one of those who arranged the election [R. 394, 423],<sup>3</sup> and that Nesbit and Clark were on a committee of seven employees who counted the ballots [R. 287]; the evidence does not support the Board's assertion that these three individuals were supervisory employees (*infra*, pp. 20-23).

Following the election, on or about September 1, 1937 [R. 316, 446], petitions, headed "Pre-organization Agreement", were circulated among the employees. They recited, in part, the following [R. 316]:

"We the undersigned, employees of the Germain Seed & Plant Company, desire to form an independent union, for the purpose of dealing with our employer under the provisions of the National Labor Relations Act, known as the Wagner Act, and we do hereby appoint W. S. Clark, Harold Frauenberger, Dorothy Turton, K. R. Luck, A. Hook, H. B. Orr and Morris Stearn as a committee to formulate an independent union for us and to represent us with our employer under the provisions of the National Labor Relations Act known as the Wagner Act."

These petitions were circulated by the committee named therein [R. 445] and by other employees [R. 315-316]. Though there was evidence that some employees signed the petitions during working hours [R. 315], Frauenberger circulated one during his vacation off the respondent's premises [R. 444-445]. The petitions, seven in number, were signed by a large majority of respondent's

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<sup>3</sup>Though Kadous and Hulphers each testified that he "believed" Frauenberger had some part in arranging the details of the election [R. 287-288, 296-297; 313], Frauenberger denied that he had any part in the election [R. 439], and he was not one of those on the committee that counted the ballots [R. 287.]

employees [R. 316-322],<sup>4</sup> and the names appearing thereon were later transferred to a single Pre-organization Agreement [R. 216-217, 444].

On September 9, 1937, the designated pre-organization committee met at the offices of Voorhees [R. 446-449] and signed the Articles of Incorporation of the Consolidated Seedsmen's Union, in which they were named as the initial directors pursuant to regular corporate practice [R. 217-220]. The following night they met at the home of one of their members to draft by-laws [R. 449-450]. On September 14, a general meeting of employees was held in the evening at a rented hall at which representatives and assemblymen were elected and the proposed by-laws were discussed [R. 450-456]. Thereafter, the same evening, the assemblymen and representatives met, elected Frauenberger president, Turton secretary-treasurer, and Viola Gates financial secretary; the representatives were instructed by Frauenberger to talk to the members to obtain information to be used as a working basis in drawing up a contract [R. 456-458]. Around the same time, another general meeting was held in the evening at the Hill Street store.

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<sup>4</sup>Among those who signed were, as the Board points out in its brief (p. 8), O. E. Johnson, assistant manager of the Hill Street store, and Stanley Williams, who was an assistant to the secretary-treasurer of respondent in passing on credits and working on collections and packet seed consignments accounts [R. 373] and who was, we submit, eligible to join the contemplated union. The Board contends that "example was set for the employees when the petitions were signed by" Johnson, Williams, Sage and other allegedly supervisory employees. The signatures of the three named appear on two of the seven petitions [R. 317, 318], and the signatures of Williams and Sage appear near the bottom of one of those two petitions. These employees could hardly have set an example for the 84 out of 104 employees who signed on the other five petitions or who signed the same petition Williams and Sage did, but before they did.

On September 20th, the incorporators met at Voorhees' office in the evening [R. 221-222], and thereafter the same evening held their first meeting as directors [R. 222-227]. The resignations of Clark, Hook, and Orr, who were not present, and of Turton as directors were accepted, and Farley, Fenster, Hatfield and Eaton were elected in their place. On September 28, 1937, the Consolidated wrote respondent, stating that the union represented a majority of the employees, offering the pre-organization agreement and application cards as proof thereof, and demanding recognition [R. 458-459]. After checking the names and signatures of Consolidated's members against the pay roll [R. 658], on October 1, 1937, respondent recognized the Consolidated as bargaining agent for its employees [R. 460-461]. Thereafter the officers of Consolidated negotiated with respondent over 20 proposals submitted by them, many of which respondent agreed to, including wage increases varying from 5 to 18 percent [R. 325-330, 462-476].

Petitioner contends, upon the basis of the above facts, that respondent dominated and interfered with the formation of the Consolidated because it permitted the employees to hold the two warehouse and Hill Street store meetings on company property, it permitted the holding of the election and the circulation of the petitions on company time, and because of the statements of Sage and the participation by him and other alleged supervisory employees in the organization of the Consolidated. Respondent did not consent to the holding of the meetings or the circulation of the petitions. If respondent was chargeable with knowledge thereof, it merely failed to prevent these activities. However, the use of company time and property in organizational efforts is not prohibited by the Act, as the Board apparently contends. It

is only when such use amounts to interference or domination or support by the employer that an unfair labor practice is committed. When the employer is neutral, and permits or silently acquiesces in the use of company property and time in the holding of organizational meetings and the solicitation of members, without discrimination between the various unions who are active, he cannot be said to have interfered or dominated with the formation of or to have given support to any particular labor organization. *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 98 F. (2d) 758, 761 (C. C. A. 2d, 1938); *National Labor Relations Board v. Mathieson Alkali Works*, 114 F. (2d) 796, 801 (C. C. A. 4th, 1940).

Here the evidence is conclusive that during the same period that the meetings were held and the petitions were circulated of which the Board complains, the AFL organizers were, to the knowledge of respondent's president [R. 256-257], calling the employees together in little groups on company property [R. 185-186] and were soliciting members on company time [R. 302, 345-346, 419, 507]. Respondent did not interfere with any of these activities. It adopted a neutral hands-off policy, and permitted the solicitation of members and the holding of meetings without discrimination in any respect. Under such circumstances respondent cannot be held to have dominated or interfered with the formation of the Consolidated by permitting the same activities on behalf of that organization as were carried on in behalf of the AFL.

The holding of an election on company time and property is not, as petitioner assumes, illegal.<sup>5</sup> It is only when

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<sup>5</sup>The Board regularly holds elections under Section 9(c) on the employer's premises, and the present form of agreement for consent election provides that "employees will not lose pay while voting."



the election is in some respects unfair or the exercise of a free choice is prevented by intimidation or coercion or other circumstances that the results of the election are not indicative of the unrestrained preferences of the employees. No such circumstances were present in the instant case, and the decisions cited by the Board in its brief (pp. 7-8) are therefore clearly distinguishable.<sup>6</sup>

The election herein was suggested by and agreed to by the employees [R. 296, 297, 483]. It was held without the consent of respondent [R. 296]. The ballot was more than fair; the CIO and AFL were given preferred positions thereon above the choice for an independent union. It was a secret ballot election. No officer, superintendent, foreman, or other supervisory employee had any part in it. (*Supra*, p. 8). There was not one word of evidence

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<sup>6</sup>In all of the cases cited by the Board except *National Labor Relations Board v. Christian Board of Publication*, 113 F. (2d) 678, 680 (C. C. A. 8th, 1940) the "elections" were called by and held by the companies involved. In the following cited cases, the ballots were definitely unfair: *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9th, 1940) cert. den. 312 U. S. 678, 61 S. Ct. 447, 85 L. Ed. 1118 (1940) ("It will be observed that the ballot is skillfully worded so as to suggest adverse criticism of the Union, and the implication is plain that a 'Yes' vote is desired."); *Titan Metal Mfg. Co. v. National Labor Relations Board*, 106 F. (2d) 254, 260 (C. C. A. 3rd, 1939) cert. den. 308 U. S. 615, 60 S. Ct. 260, 84 L. Ed. 514 (1939) ("We call [the ballot] unique because it contains in one document a campaign appeal and the opportunity to decide the issue campaigned about."); *National Labor Relations Board v. American Mfg. Co.*, 106 F. (2d) 61, 65 (C. C. A. 2nd, 1939) aff'd 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988 (1940) ("[The ballots] as a means of electing delegates to bargain for the employees, were a complete farce."). In the following cases the election was conducted just after the complaining union had been designated as representative by a majority of the members; *National Labor Relations Board v. Crystal Spring Finishing Co.*, 116 F. (2d) 669, 672 (C. C. A. 1st, 1941); *National Labor Relations Board v. New Era Die Co.*, 118 F. (2d) 500, 503 (C. C. A. 3rd, 1941); *National Labor Relations Board v. Colten*, 105 F. (2d) 179, 181 (C. C. A. 6th, 1939); *American Mfg. Co.*, *supra*;



indicating any employee was coerced or intimidated in voting, or that anyone connected with the management urged any employee to vote a particular way. There was even no evidence that any of the workers whom the Board contends are supervisory employees said a single word to influence the vote. Under such circumstances, the fact that the election was held on company time does not constitute evidence of interference or domination. *National Labor Relations Board v. Swank Products, Inc.*, 108 F. (2d) 872, 874 (C. C. A. 3rd, 1939); *Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 980 (C. C. A. 7th, 1941).

Sometime prior to the election, respondent distributed to its employees "A Statement of Facts", signed by respondent's president [R. 259].<sup>7</sup> This statement was the

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*Christian Board of Publication, supra.* In the following cases the "election" was not conducted by secret ballot: *American Mfg. Co., New Era Die Co., Colten, Christian Board of Publication, supra.* In the following cases there was considerable coercion or intimidation, as, for example, the discharge of employees for union activity, just prior to the election; *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, .... U. S. ...., 62 S. Ct. 608, 86 L. Ed. 559 (1942) rvs'g 116 F. (2d) 350, 351 (C. C. A. 7th, 1940); *Crystal Spring Finishing Co.; Colton, supra.* In *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2nd, 1938) cert. den. 304 U. S. 576, 58 S. Ct. 1046, 82 L. Ed. 1540 (1938), following a strike vote taken by the union, the company undertook its own strike vote in which the union members refused to participate; the results of this "election" were therefore indecisive. In the *Christian Board of Publication* case, the company conducted a fair secret ballot election in which the outside union won; the company did not then announce the results of the election; about a week later certain supervisory employees circulated a petition asking a raise and solicited the employees to sign the petition; the employer recognized an inside union on the basis of this petition.

<sup>7</sup>The evidence does not definitely establish just when this statement was distributed [R. 257-258]. The Board found that it was distributed "shortly after" the first meeting on the warehouse shipping floor [R. 160].

only pronouncement by respondent during this period of its views on union matters. Respondent stated therein in part:

“You do not have to join any labor union or organization in order to hold your job. \* \* \*

“You do not have to pay dues, levies, nor any kind of tribute to any organizer or group to hold your job.

“You do not have to belong to any organization to get wage increases or enjoy shorter hours. Whenever these benefits are possible they are made to those who do not belong to any organization just the same as to those who do.

“You do not have to be a member of any organization. Likewise, you are at liberty to join any lawful organization.”

This statement did not contain a single word suggesting that respondent desired the formation of an inside union. The Board's finding [R. 161] that by the statement respondent “made amply clear to its employees that it would not look with favor upon their affiliation with an ‘outside’ union” is clearly unwarranted. *Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 981 (C. C. A. 7th, 1941); *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. (2d) 800, 803 (C. C. A. 6th, 1940). If the statement can possibly be construed as “anti-union”, it was anti-**all** unions, independent as well as affiliated.

A majority of those employees who voted in the election for any union, voted for an independent. Pursuant to this indication of preference, petitions were then circulated which designated a committee to form an independent union. There was no evidence of a single word having

been said by any employee or supervisor to induce anyone to sign the petitions. The only evidence in this connection was the testimony of one witness who when asked what were the circumstances under which he signed the petition, replied "That we were willing to go into this Independent Union" [R. 395-396]. It is submitted that there is not a scintilla of evidence that respondent, by failing to prohibit the holding of three meetings on its property, the holding of the election, and the circulation of the petitions on company time, dominated or interfered with the formation of or contributed support to the Consolidated.

As mentioned at the opening of our brief, petitioner also relies on the activities of the following employees as establishing a violation of the Act by respondent: Sage, Hill, Gates, Clark, Nesbit, Hatfield, Hook, Luck, Frauenberger, and Turton. We will discuss separately the activities of each of these employees and the responsibility of respondent therefor.<sup>8</sup>

*Sage.* The Board contends that the activity of Sage in arranging the two warehouse meetings and in making the statements he did and in suggesting the name of an attorney at the first of these meetings was improper, and that his activities and statements are chargeable to respondent. Since 1933 or 1934 [R. 184], Sage had been the purchasing agent in the sundries department [R. 184-185, 651]. He had no authority to recommend hiring or

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<sup>8</sup>Although the Board complains of the activities of Nesbit, Hatfield, Hook, Luck and Turton in the administration of the Consolidated as officers and directors following its formation, our discussion will be limited to their participation in its initial organization. If the Consolidated was not formed in violation of the Act, the subsequent participation of these individuals in its administration could not convert it into an employer-dominated union.

firing [R. 651], and at no time did he have any employees working under him or did he supervise or control the work of any employee [R. 208]. The Board contends (petitioner's brief, pp. 9, 18-19) that the employees believed Sage was acting for and on behalf of the management because some of them took the position at the Hill Street store meeting that he was ineligible to belong to the union after Voorhees expressed his views as to who was eligible [R. 198-200, 213]. At Voorhees' request, Sage left before the meeting was opened. We submit that if this circumstance establishes anything, it is only that these employees were of the opinion that Sage was not eligible to join the Consolidated. If it constitutes any evidence that the employees believed Sage was acting for and on behalf of the management, it furnishes stronger evidence that they were not dominated, interfered with, or led by him since they did not hesitate to challenge his right to attend the meeting.

In arranging the two warehouse meetings, Sage acted on his own and without consent of respondent's officers but with the approval of the employees [R. 204]. He did not participate in the second meeting except to introduce Voorhees. His suggestion of the name of an attorney was not improper. *Magnolia Petroleum Co. v. National Labor Relations Board*, 112 F. (2d) 545, 551-552 (C. C. A. 5th, 1940). It was at the request of the employees that he had Voorhees attend the second meeting [R. 305]. Voorhees had no connection with respondent and he served the Consolidated faithfully as its attorney, when the occasion required, continuously up to the time of the hearing.

At the first warehouse meeting, Sage stated that he thought it would be a good thing to have an inside union and, according to the testimony of Hulphers, that the

heads of the company would rather see a house union go in [R. 304]. Such expressions of fact and opinion, even if it be assumed respondent was chargeable with Sage's statements, do not constitute interference or domination (*infra*, p. 37). According to Hulphers [R. 304], Yoakum [R. 392] and Freeman [R. 421], Sage is also supposed to have stated something to the effect that Meyberg and Schoenfeld, respondent's president and vice-president, respectively, had enough money and could close the plant doors. We sincerely believe that this is the only evidence of possible interference in the entire record, even if we assume respondent is chargeable with that statement. However, in view of the following circumstances, and recognizing the power of the Board to determine the credibility of witnesses, we submit that this testimony does not amount to a scintilla of evidence.

In the first place, it should be noted that the alleged statement does not even contain a threat; Sage is supposed to have said, not that respondent *would* close the doors, but that it *could*. Secondly, not only did Sage deny making the statement [R. 191-194, 650], but neither Kadous nor Luck, the only other witnesses who testified as to the discussion at this meeting, recalled any such statement [R. 281, 581]. Kadous, as has heretofore been pointed out (*supra*, p. 5), was a witness called by the Board, was a CIO member at the time of the hearing in April, 1941, and was not then an employee of respondent, Meyberg having discharged him in January, 1940 while he was president of the Consolidated. In view of the fact that Hulphers, Yoakum and Freeman were all members of the AFL, the complaining union, certainly the preponderance of the evidence establishes that Sage did not make the alleged statement. Freeman's performance on cross-



examination was alone sufficient to render his testimony on direct completely worthless [R. 427-430]. Hulphers admitted his bias against the Consolidated and, as we shall hereinafter point out (*infra*, pp. 32-34), these three witnesses even prior to the hearing commenced a campaign on behalf of the AFL to discredit and cause the dissolution of the Consolidated. Assuming Sage made some such statement, apparently it did not impress Hulphers, Yoakum or Freeman or anyone else. There is nothing in their own testimony indicating that they ever had any fear of campaigning openly for the AFL, and not only was there no evidence that they ever mentioned this alleged statement of Sage until the hearing, but if the statement was made it did not dissuade them from joining the AFL. Cf. *Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 982 (C. C. A. 7th, 1941); *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 98 F. (2d) 758, 762 (C. C. A. 2d, 1938). Moreover, there was no evidence that any employee assumed that Sage purported to speak for respondent at this meeting.

The most significant fact to be considered in connection with this alleged statement of Sage is that the record establishes conclusively that respondent has not discriminated between members of the AFL, CIO or Consolidated, or non-union employees in any respect whatsoever. There is no evidence that any officer of respondent or any foreman or supervisor (with one possible exception, discussed *infra*, p. 37) of respondent even made any statement disparaging or criticising the AFL or any national union, and respondent has not at any time even sought to prevent the solicitation of its employees while working by the AFL organizers. Moreover, assuming Sage made the state-

ment attributed to him, its effect, if any, was offset by the statement of Voorhees at the second meeting that the employees had the right to form or join any union without the employer having any voice in the matter. Finally, the asserted statement of Sage was disavowed by respondent when it distributed shortly after the first warehouse meeting under the signature of its president the Statement of Facts heretofore referred to (*supra*, p. 14). *Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 982 (C. C. A. 7th, 1941). It is submitted that respondent is not chargeable with the acts or statements of Sage and that in any event there is no substantial evidence that his acts and statements interfered with or dominated the formation of Consolidated.

*Hill and Gates.* Concededly these two men were foremen. They were present at the first warehouse meeting, and were dismissed from the second shortly after it opened. They did not say a word at either meeting. Certainly such facts are not evidence of interference or domination. *Cf. L. Greif & Bro., Inc. v. National Labor Relations Board*, 108 F. (2d) 551, 556-557 (C. C. A. 4th, 1939).

*Clark.* We do not concede, as petitioner asserts in its brief (p. 18), that Clark was in a position of authority. He was not, as petitioner assumes, in charge of respondent's Van Nuys nursery at the time here involved. It was not until early in 1939 that he became in charge of the nursery [R. 382]. In the fall of 1937, Clark had charge of the nursery *department* of the *Hill Street retail store* [R. 256, 372] which had about fifteen employees [R. 180] and a manager and assistant manager [R. 373]. Evidence that he had "charge" of a department "is insuffi-

cient to prove that he supervised any employee". *National Labor Relations Board v. Sparks-Withington Co.*, 119 F. (2d) 78, 82 (C. C. A. 6th, 1941). Clark was on the committee of seven that counted the ballots following the election, he was on the pre-organization committee, and signed the Articles of Incorporation of the Consolidated. Though petitioner asserts that Clark "took an active part in securing the signatures of employees" to the pre-organization petition, actually there was not one word of testimony of any activity on Clark's part. He did not attend the meeting of the committee when they worked on the by-laws [R. 449], and did not attend the first meeting of the incorporators [R. 221] or of the Board of Directors, and his resignation was accepted at this last mentioned meeting [R. 222-223]. Certainly nothing in Clark's activities or his position furnishes any evidence of domination or interference of the Consolidated by respondent.

*Nesbit.* He worked on the fourth floor under Hill and Gates in filling orders. He was the oldest employee in the department in which the number of employees varied from two to five [R. 512-513]. He testified that he was never in charge of this floor,<sup>9</sup> that no one assigns the

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<sup>9</sup>At the hearing in April, 1941, AFL Hulphers, who had been on the fourth floor since January, 1941, testified that he was then working "under" Nesbit [R. 272]. AFL Loy, who was first hired about February 15, 1940 [R. 627], testified that he worked under the supervision of Nesbit who gave him his assignments of work [R. 628]. AFL Yoakum testified that for a month he had been working on the fourth floor and that if there was something in stock Nesbit wanted piled away or some order he wanted packed then he packed it, and that was then his job to pack or pile stock away [R. 389-390]. Aside from the fact that these three witnesses were new employees in Nesbit's department and it would be natural that he, an older employee in the department, would lead them, the testimony of these witnesses does not establish anything about Nesbit's duties in the fall of 1937.

men work, each knowing what he is to do [R. 514], but that if he was called away he might ask one of the other men to fill his order [R. 516]. He worked along with the other men in the department [R. 401], did not recommend hiring or firing, and was never asked as to the quality of any other employee's work [R. 515]. All of the testimony concerning Nesbit's duties is contained in the following pages of the record: 272, 389-390, 401, 512-516, 628.

Nesbit attended the two warehouse meetings and was on the committee that counted the ballots. The duties and activities of Hatfield, Hook, Luck, Frauenberger and Turton will be related prior to considering whether or not respondent was chargeable for the activities of any of them and whether or not, if so, their action was in any respect in violation of the Act.

*Hatfield.* He was engaged in and was responsible for the filling of orders on the fifth and sixth floors. He occasionally had one helper and sometimes two. When he needed a helper, he asked Gates for one if he could contact Gates; if not, he would "grab" a general laborer to help. He would tell the helper what to do and see that he did it properly. He never reported to Gates about the quality of work done by any helper or made any other comments about his work [R. 506-511]. Hatfield was present at the two warehouse meetings and was elected to the Consolidated Board of Directors on September 20, 1937.

*Hook.* He was the only regular employee engaged in cleaning seeds [R. 483]; during certain seasons there were as many as twelve employed in this department. All worked under Gates, though Hook would relay Gate's orders to the others [R. 484] and would guide the others

and ask them to do certain things [R. 486]. He worked with his hands along with the others [R. 401], did not have the power to and was never asked to recommend as to hiring and firing, and was never asked for his opinion as to the quality of another employee's work [R. 479, 485, 651]. On one occasion another worker refused to do what Hook asked him to, stating that he didn't have to do what Hook told him to do; Hook admitted that he had no authority and asked him to see Gates [R. 485]. All of the evidence concerning the duties of Hook is contained in the following pages of the record: 190, 272-274, 387-389, 418, 478-481, 483-491, 651-652. Hook attended the two warehouse meetings, had some part in arranging the election, and was on the pre-organization committee.

*Luck.* He worked in the bulb department under the supervision of Pieters [R. 540, 584]. In the slack season he was the only employee in the department [R. 585] and did everything from sweeping the floor to keeping the stock, filling orders, and buying merchandise [R. 583]. In the busy season, which lasted about seven months each year, there would be at most five employees in the department [R. 585], all green workers, and Luck would instruct them, "Do this," and "Do that; that is red and blue" [R. 583-584]. He had no power to hire or fire [R. 577], and had nothing to do with layoffs [R. 587-588]. When a worker in the department wasn't getting the job done, Luck would go to Pieters and tell him he would like to have that employee replaced and put on some other job [R. 577]. The following pages of the record contain all the testimony concerning the duties of Luck: 539-540, 577, 583-588. Luck attended the two warehouse meet-



ings, was on the pre-organization committee, and was a member of the first Board of Directors of the Consolidated.

*Frauenberger.* In the fall of 1937, Frauenberger was the city shipping clerk under Hill [R. 383, 384, 432]. He did manual labor, worked with the merchandise, helped load the trucks [R. 385], checked the loads, and attended to the air tubes and complaint calls [R. 432]. On orders of Hill, he distributed work to the drivers and dispatched the trucks [R. 384, 432-433]. He had no authority to hire or fire or recommend hiring or firing [R. 651], and had no authority to reprimand truck drivers for not doing their work properly [R. 385]. At the time of the hearing, the city shipping clerk was Watson [R. 652], a member of the AFL [R. 519, 623]. All of the evidence concerning the duties of Frauenberger is contained in the following pages of the record: 273, 279, 383-386, 432-437, 651. Frauenberger was on the pre-organization committee, solicited signatures to the petitions, was a member of the first Board of Directors and was the first president of Consolidated.

*Turton.* She was the secretary of respondent's vice-president. She was on the pre-organization committee, the first Board of Directors of the Consolidated until September 20, 1937, and was the first secretary of the Consolidated. Since office employees were included among the members of the Consolidated, certainly it was proper for Turton to be a member of and take an active part in the formation of the Consolidated. The secretary of respondent's president was not a member of the Consolidated, and Meyberg advised her that she could join or not as she pleased [R. 655].

It is submitted that the activities of Nesbit, Hatfield, Hook, Luck and Frauenberger, upon which petitioner principally relies, do not establish that respondent has violated the Act. Even if we assume for purposes of argument that they were supervisory employees, that fact alone does not establish that their participation in the organization of an inside union constituted interference or domination by respondent with the formation of the union. *National Labor Relations Board v. Mathieson Alkali Works*, 114 F. (2d) 796 (C. C. A. 4th, 1940); *Magnolia Petroleum Co. v. National Labor Relations Board*, 112 F. (2d) 545 (C. C. A. 5th, 1940); *National Labor Relations Board v. Sparks-Withington Co.*, 119 F. (2d) 78 (C. C. A. 6th, 1941); *National Labor Relations Board v. Swank Products, Inc.*, 108 F. (2d) 872 (C. C. A. 3rd, 1939). Only in the event the employees had "just cause to believe that [they] \* \* \* were acting for and on behalf of the management," would their conduct be chargeable to respondent and establish a violation of the Act. *International Ass'n of Machinists, etc. v. National Labor Relations Board*, 311 U. S. 72, 80, 61 S. Ct. 83, 88, 85 L. Ed. 50, 56 (1940). While the supervisory status of any employee is a circumstance to be considered in determining this question, it is only one of the factors to be taken into account. Other factors, as, for example, the employer's union attitude, are of equal importance.

Nesbit, Hatfield, Hook, Luck and Frauenberger were not general foremen or working foremen. They did not have the authority to recommend hiring or firing or to discipline any employee or to report on the quality of work of any employee, and they worked at the same general type of work as the other employees in the depart-

ments in which they were employed. If deemed to have any supervisory status, they were merely key or lead men. They were, in general, older employees with more experience and intelligence and a better education than many of respondent's employees. They were the type of men who would naturally take the lead in any endeavor in the plant, whether it be union organization, a political campaign, solicitations for the Community Chest, the establishment of payroll defense tax saving plan, or anything else. Such fact is not any evidence, however, that the employees believed them to be acting on behalf of the management.

It is very significant that none of these key men are quoted as having made a single anti-AFL statement or as having purported to speak for respondent. There was not a word of testimony that any of them ever sought even to influence an employee's choice of unions. In view of the similar silence of respondent's officers, they can hardly be said to have been acting for respondent in organizing the Consolidated. It is also significant that the record contains no evidence of any particular activity on the part of any of them, except Hook who assisted in arranging the election, until after the employees had by secret ballot indicated their preference for an inside union. It was then that they, along with others, took the initiative in organizing the Consolidated. If their efforts had been directed toward soliciting membership in the AFL, we doubt that anyone would have ever contended that

because of their positions, respondent was chargeable for their acts.

The four cases relied upon by the petitioner in its brief (pp. 20-21) as establishing employer responsibility for these "subforemen" are clearly distinguishable.<sup>10</sup> It is significant that petitioner does not cite a single case where

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<sup>10</sup>The cited cases will not be discussed in detail; we will merely point out some of the distinguishing factors in each of them. In *International Association of Machinists, etc. v. National Labor Relations Board*, 311 U. S. 72, 61 S. Ct. 83, 85 L. Ed. 50 [1940] the company was violently anti-CIO. Four supervisory employees, three of whom had been the leaders in a company-dominated union, conducted a campaign for the AFL, during which they stressed the fact that the employer would prefer those who joined the AFL to those who joined the CIO and that the employees could withdraw from the AFL after they had beaten the CIO. While they apparently did not have the power to hire and fire, these four employees all had men working under them and they exercised general authority over the employees. In *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 61 S. Ct. 358, 85 L. Ed. 368 (1941), the employer was definitely anti-union, having, among other acts, discharged men for union activity. In this setting supervisors and foremen who had general authority over the employees organized an inside union. In *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 61 S. Ct. 320, 85 L. Ed. 309 (1941), supervisors and foremen were extremely active in forming an inside union during the course of which they made threatening statements. The employer merely contended that he was not responsible for their activities because he had not authorized them so to act. In *National Labor Relations Board v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 786-788 (C. C. A. 9th, 1941), the company based its defense solely on the same ground. The supervisory employees there involved were division superintendents, general foremen, and job foremen, all of whom had authority to administer reprimands, report on the performance of the men working under them, and make recommendations as to discharges. These supervisory employees made statements to the workers to the effect that if the CIO won the election, men would lose their jobs and the company would contract its work out. Moreover, the Board found that these employees "did in fact hold positions with the respondent which gave them certain powers of direction over other employees, who identify them with the management." The company did not challenge this finding.

an employer has been held responsible for the activities of lead men such as those here involved. On the other hand, in *National Labor Relations Board v. Arma Corp.*, 122 F. (2d) 153 (C. C. A. 2nd, 1941), notwithstanding the fact that an employee was discharged for CIO activity just prior to the formation of an inside union, the Circuit Court of Appeals for the Second Circuit held that the inside union was free from employer domination although certain key men or straw bosses were active in its formation. In this connection, Judge Augustus N. Hand stated (p. 156):

“The principal ground suggested for the finding that Independent was company-dominated is the action of ‘key men or straw bosses’ which is said to have amounted to coercion and to have been binding on Arma within the doctrine of *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 61 S. Ct. 83, 85 L. Ed. 50; *H. J. Heinz Co. v. Labor Board*, 311 U. S. 514, 61 S. Ct. 320, 85 L. Ed. 309, and *Labor Board v. Link-Belt Co.*, 311 U. S. 584, 61 S. Ct. 358, 85 L. Ed. 368. One of the foremen named Wallicki suggested to Raue, who was the originator of the C.I.O. movement in Arma that Raue should join the A. F. of L., of which Wallicki was a member. This suggestion was in the course of a conversation begun by Raue outside the plant and seems to have been the only instance of even a possible act of interference by any one of as high rank as a foreman. It naturally had no effect on Raue or anyone else. The key men were not supervisory employees in any proper sense, but were only an amorphous group of employees senior to small groups of from one to four appren-



tices or workmen junior in service to the key men, who were supposed to furnish leadership and advice to the juniors in a limited field. The key men, like the other workmen, were paid by the hour and received no additional compensation by reason of services rendered as key men as distinguished from their ordinary tasks, with the possible exception of a negligible bonus at Christmas. If such employees were not to be free to express their opinions and to urge fellow-workmen to organize in a certain way, the interest and activity of the most competent men in the appropriate bargaining group would be eliminated. The key men had no power to hire or fire apprentices assigned to them, or to recommend any of them for promotion. There was no evidence that the officers or supervisory employees consented that key men should represent the views of the corporation, or gave the other workmen reason to suppose that the key men worked for Independent in order to please Arma. If the latter had interfered with the labor activities of the key men, except to prevent canvassing during working hours, it surely would have been guilty of an unfair labor practice and would have deprived these men of rights guaranteed under Section 7 of the National Labor Relations Act, 29 U. S. C. A. §157.”

We submit that there is no substantial evidence that respondent dominated or interfered with the formation of the Consolidated and that the Board's finding cannot be sustained.

B. ASSERTED INADEQUACY OF THE CONSOLIDATED AS BARGAINING REPRESENTATIVE.

The Board contends (petitioner's brief, pp. 10-14) that the subservience of the Consolidated as bargaining agent is demonstrated by the asserted facts that it never sought a written contract, that it consistently refused to present to respondent employee demands for further wage increases, and that in 1940 respondent gave it credit for wage increases which it had refused to seek. At the outset of our discussion we wish to point out that it is not the function of the Board to "sit as a board of censors in testing the form and effectiveness of each labor organization brought to its attentions," *E. I. du Pont de Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388, 398 (C. C. A. 4th, 1940) cert. den. 313 U. S. 571, 61 S. Ct. 959, 85 L. Ed. 1529 (1941). Undoubtedly in the usual situation an inside union does not have as much strength and power to enforce its demands as the large international unions have. However, employees may willingly sacrifice this power in order to enjoy the advantages of an inside union (see *National Labor Relations Board v. Sterling Electric Motors, Inc.*, 109 F. (2d) 194, 201 (C. C. A. 9th, 1940)), not the least of which in importance are the power of the employees to control and determine their own actions and freedom from the necessity of going on sympathetic strikes. It may be that the Consolidated did not obtain all the concessions which an AFL union might have secured by strikes or threats of economic coercion, but this does not establish that the Consolidated was employer-dominated.

There is no magic in a written contract, and the failure of Consolidated to obtain one does not establish anything.

The fact is that Consolidated did make definite agreements with respondent [R. 325-327, 467, 471-476, 574-575], although no signatures were affixed thereto.

The failure of the officers of Consolidated to demand the wage increases sought in the petition of February, 1938, which was prepared and circulated by Hook [R. 493, 522], is not surprising in view of the fact that just a few months previous Consolidated had obtained wage increases of from 5 to 18 percent [R. 328, 470]. Moreover, continually since its formation, the Consolidated frequently made demands upon respondent for adjustments and improvements in working conditions, hours and pay, and respondent granted many of these demands, including wage raises [R. 546-550, 557-558, 571-572, 644-645, 658-670, 679-680].

The Board's contention that Consolidated refused in 1940 to seek wage increases and that respondent dominated it by giving it credit for the increases granted is not supported by the evidence. The following facts in this connection are undisputed. At the August 20, 1940 meeting of the Consolidated [R. 358-359] it was moved and carried that petitions for new wage scales be circulated. Hook, a director of the Consolidated, and Butterfield, who was elected president of the Consolidated on September 23, 1940, did in fact prepare and circulate petitions for wage increases [R. 350-351, 622-623, 637-638]. These petitions were presented by Butterfield to Meyberg at either the September 4 or September 17, 1940 group meetings with him [R. 364, 368, 623]. According to the testimony of Hulphers, at the September 17 meeting when Meyberg asked him if he was the speaker for the men, Hulphers replied "No", [R. 340-341] "because the vice-

president of the Consolidated Seedmen's Union was there, and I figured it was his place to do the speaking and to carry on the meeting" [R. 349]. At the general meeting of Consolidated members on September 13, 1940, the circulation of additional petitions for wage increases was agreed upon [R. 360-361]. On September 23, 1940, the Board of Directors of the Consolidated held a special meeting at which they voted Watson out of office as president and elected Butterfield president in his place, and they then adjourned to meet with Meyberg [R. 519] and presented the additional petitions to him at that time (Board Exh. 34-A). Following his election as president, Butterfield took an active part in securing the wage increases [R. 602-603]. Again on October 3, the Board of Directors met with Meyberg concerning their demands [R. 589-590]. Finally on October 8, 1940, the Board of Directors met with Meyberg to report on the acceptance of his proposed wage increases [R. 592-594]. Thus it appears that the Consolidated was responsible for initiating, negotiating and securing the wage increases of October, 1940. Respondent gave blanket wage increases at this time. As Consolidated was the duly designated bargaining agent for the employees, it was respondent's duty to bargain with it and if it had granted these wage increases without negotiating with the Consolidated, it would have committed an unfair labor practice.

We submit that the evidence establishes that Watson, Hulphers, Yoakum, Freeman and other members of the AFL were engaged in a concerted attempt to destroy the Consolidated and that it was part of their campaign to make it appear that Consolidated was ineffective as a bargaining agent and to assert that respondent gave credit

to the Consolidated for the 1940 blanket wage increases in violation of the Act. The Board points out in its brief (p. 11) that in August, 1940 when "an employee proposed at a Consolidated meeting that an attempt be made to obtain a signed agreement, the president stated simply that 'we could not get it' ". It was John Epperson, *a member of the AFL*. [R. 621], who said at that meeting that "what we should have is a signed agreement". The minutes recite that, "President Watson said we could not get it" [R. 359]. There was no evidence that Watson had ever consulted any officer of respondent concerning or ever made a demand for a signed agreement. Watson was at that time a member of the AFL as he had been since before he was elected president of the Consolidated.<sup>11</sup> At the meeting of the Consolidated Board of Directors of September 23, 1940 when Watson was asked to resign as president because he was a member of the AFL, he refused to do so. He was then voted out of office [R. 519].

The Board further contends (petitioner's brief p. 11) that in the summer of 1940 the members of the Consolidated were told by their representatives that "it was absolutely impossible to get a raise". The only testimony in this regard was that of AFL member, Loy, who, without identifying the speaker and without stating whether or not he was a director or officer of the Consolidated, testified that at a Consolidated meeting it was said it was impossible to get a raise [R. 640-641]. The minutes of

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<sup>11</sup>Watson was elected president of the Consolidated on February 6, 1940 [R. 263-264]. John Epperson testified that he started to work for respondent in January, 1940 and that Watson was at that time a member of the AFL [R. 619, 623].



the Consolidated do not reflect any such statement and Loy admitted that he was not present at the meeting at which this statement was supposedly made.

Hulphers, the Board's star witness, admittedly was against Consolidated from the beginning [R. 347, 354]. He went to the Hill Street store meeting in the fall of 1937 merely to see who attended it and then left [R. 314, 354]. On September 3, 1940, Yoakum, Freeman, Loy, John Epperson and others went together to the AFL office where they signed application cards [R. 331-332]. The following day Hulphers, Loy and Montgomery had the meeting with Meyberg referred to in petitioner's brief at page 12. On September 13, at a meeting of the Consolidated, Hulphers and Freeman declined nominations as directors and at the same meeting Hulphers moved for a ballot to disband the union [R. 354-355, 360-361]. On top of all this, Hulphers testified that he solicited Loy (during working hours, of course) to become a member of Consolidated [R. 323-324]; and at that time Loy was to Hulphers' knowledge also a member of the AFL!!<sup>12</sup> If, as petitioner contends, the Consolidated was not as an effective bargaining agent in 1940 as the Board deems it should have been to be a free agent, the responsibility therefor is not that of respondent but of Watson, the president of the Consolidated, Hulphers, and the other AFL members who were seeking to break it up. It is submitted, however, that there is no merit whatsoever in petitioner's contention that the Consolidated was a sub-

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<sup>12</sup>Hulphers testified that it was the middle of the summer of 1940 when he solicited Loy to join Consolidated [R. 324]. Loy testified that it was after he had joined the AFL [R. 629] and according to Hulphers' own testimony he was with Loy when Loy signed an AFL application on September 3, 1940 [R. 331-332].

servient bargaining agency and that respondent sought to conceal its ineffectiveness by given it credit for the 1940 wage increases.

C. RESPONDENT'S ASSERTED FINANCIAL AND OTHER SUPPORT OF THE CONSOLIDATED.

If the Consolidated was not formed in violation of the Act, it is submitted that nothing in the circumstances relied on by the Board in its brief (pp. 14-15) establishes financial or other support of the Consolidated, the bargaining agent, by respondent in violation of Section 8(2). The activities of the Consolidated members on company time were carried on without the permission of respondent [R. 576-577]. Though there was some solicitation of members in the Consolidated on company time,<sup>13</sup> as we have heretofore pointed out, solicitation for the AFL was similarly carried on without interference by respondent. As to the collection of dues by the Consolidated, it is significant that on the only occasion when this activity was observed by an officer or foreman of respondent, Gates reprimanded Hook for collecting dues during working hours [R. 626].

The notices of meetings of the Consolidated were posted without permission of respondent in the same place other notices were posted by employees [R. 408, 411]. Many collective bargaining contracts provide for the employer to make available to the union a bulletin board and

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<sup>13</sup>The solicitation of employees on company time to join the Consolidated was not the regular practice [R. 397, 424, 506]. It should also be noted that there was only evidence of one meeting of the Board of Directors of Consolidated on company premises, a meeting which was held just prior to a meeting of the Board with Meyerberg [R. 519-520; cf. 290, 292].

to permit the collection of dues in the plant; such contractual provisions are not in violation of the Act, and if an employer may properly so contract, he may by silent acquiescence permit the bargaining agent to do the same thing. Respondent's "support" of the picnic and wienie roast<sup>14</sup> sponsored by the Consolidated but to which all the employees and officers of respondent were invited [R. 265, 652-653], could hardly have been a violation of the Act. Certainly the mere fact that an employer is unionized does not preclude him from thereafter aiding the social functions of his employees. It is submitted that there is no substantial evidence that respondent contributed financial or other support to the Consolidated in violation of Section 8(2).

D. ASSERTED MANIFESTATIONS OF PREFERENCE FOR THE CONSOLIDATED BY RESPONDENT.

The Board relies on three instances (petitioner's brief pp. 15-17) involving Meyberg, Hill and the Statement of Facts as indicating that respondent expressed a preference for the Consolidated over the AFL. Petitioner's account of Meyberg's conversation with Hook is incomplete. Hook was delinquent in paying dues to the Consolidated. He then went to Meyberg and asked if he would be laid off if he did not pay his dues to or did not belong to Consolidated. Meyberg replied "No." Hook then informed Meyberg that he had not been given receipts for the dues he had paid Consolidated and that was the reason he objected to paying them any more. It was then that Meyberg made the statement quoted in the Board's brief [R.

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<sup>14</sup>The evidence does not establish that respondent "gave" the use of its shipping floor to the Consolidated for a dance.

504-505]. Consolidated was at that time the bargaining representative of respondent's employees; under such circumstances, respondent can hardly be held to have expressed a preference for Consolidated over the AFL by advising a delinquent member that it would keep harmony in the firm if he continued to pay his dues to that union.

As we have heretofore pointed out (*supra*, p. 15), by the Statement of Facts distributed by respondent in the fall of 1937, respondent did not express itself as favoring an inside union. Moreover, even if it be assumed that by this statement or by the statement of Meyberg to Hook respondent expressed a preference for an inside union, such an expression does not amount to a violation of the Act. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, 62 S. Ct. 344, 86 L. Ed. 306 (1941); *Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 982 (C. C. A. 7th, 1941); *Midland Steel Products Co. v. National Labor Relations Board*, 113 F. (2d) 800, 803-804 (C. C. A. 6th, 1940); *The Press Co., Inc. v. National Labor Relations Board*, 118 F. (2d) 937, 942 (C. A. D. C., 1940) *cert. den.* 313 U. S. 595, 61 S. Ct. 1118, 85 L. Ed. 1548 (1941), and cases there cited. There was not in the instant case a "complex of activities, such as the anti-union background of the Company," etc., as would justify, under the opinion in the *Virginia Electric & Power Company* case, a conclusion that these statements amounted to interference.

The statement attributed to foreman Hill by Thrift when considered by itself would constitute some evidence of a violation of the Act. However, of the number of witnesses who testified concerning the activities at respondent's plant over a period of almost four years, this

was the only incident testified to by any witness of an anti-AFL statement uttered by a single one of respondent's officers or supervisory employees. Such an isolated instance is not sufficient to sustain a finding of a violation of the Act. *E. I. du Pont de Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388, 400 (C. C. A. 4th, 1940) *cert. den.* 313 U. S. 571, 61 S. Ct. 959, 85 L. Ed. 1529 (1941). Moreover, it could not have amounted to unlawful interference under Sections 8 (1) or (2) since it did not make any impression on Thrift at all (other than that the statement was one he should make a note of for the Board [R. 609-610] to assist the AFL clique in destroying Consolidated); he continued to remain a member of the AFL [R. 610]. *Cf. Diamond T Motor Car Co. v. National Labor Relations Board*, 119 F. (2d) 978, 982 (C. C. A. 7th, 1941); *Ballston-Stillwater Knitting Co., Inc. v. National Labor Relations Board*, 98 F. (2d) 758, 762 (C. C. A. 2nd, 1938). Thrift was well aware that he need not fear any reprisals from respondent if he continued active for the AFL, as he did.<sup>15</sup> In fact, at the hearing the Board struck out of its complaint the allegation that respondent had "interfered with, restrained and coerced its employees in the exercise of the rights

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<sup>15</sup>Thrift wore his AFL button continuously for a period of over a month prior to October 10, 1940, the day on which Hill allegedly made the quoted statement to him [R. 607, 613]. During this period Hill saw Thrift almost every day [R. 613-614], but said nothing to him about his union affiliation. On October 3, 1940, Thrift learned that he was to be laid off, and went to Meyberg and stated that he needed the work [R. 618]. Meyberg at that time knew Thrift was a member of the AFL [R. 656]. On the same day at a meeting of the Consolidated Board of Directors with Meyberg, he was asked what he would do about the approaching layoff of Thrift, and he replied that he was trying to keep him employed [R. 589-590], and he told Hill to keep Thrift working [R. 656], and Thrift was kept on [R. 605, 656].



guaranteed to them in Section 7 of the Act . . . through said Meyberg, Hill and others by attempting in divers manners to persuade and coerce various of its employees from joining and/or remaining members of the" AFL [R. 12, 253-254]. It is submitted that respondent did not interfere with the rights of its employees in violation of Sections 8 (1) or (2) of the Act by the above-referred to statements relied on by petitioner.

E. CONCLUSION AS TO RESPONDENT'S ALLEGED VIOLATION OF SECTIONS 8 (1) AND (2) OF THE ACT.

The entire history of the Consolidated belies employer domination. It was formed following an expression in a secret ballot election by respondent's employees of a preference for an inside union. None of the officers or supervisory employees of respondent made any coercive or threatening statements to induce an employee to refrain from joining the AFL or to organize or join the inside union. Respondent has at all times been impartial. The so-called supervisory employees who participated in the movement to form the independent union did not hold positions which made respondent chargeable for their actions, and the evidence does not establish that a single employee believed or had reason to believe that they were acting on behalf of the management.

When the evidence concerning the Consolidated is examined in its entirety, the conclusion is inescapable that it was free from employer domination.<sup>16</sup> Consolidated

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<sup>16</sup>For the convenience of the Court in examining the record, a chronological list of the minutes of the meetings of the Consolidated is set forth herein as Appendix "B," *infra*, p. 52. This list is not complete, since minutes of all of the meetings were not introduced in evidence. Some of the minutes admitted in evidence have not been printed in the record; in those instances, the exhibit number is given instead of the record page.

paid its own way. It paid for the expenses of incorporation, the premium on the bond of its treasurer, the corporate seal, union buttons, application and membership cards [R. 669-671]. It held monthly meetings of the membership at a rented hall, and held more frequent directors' meetings, usually at the home of one of the directors who was paid for its use [R. 231]. It paid sick benefits to its members [R. 675, 682]. From time to time, as the occasion required, it consulted and paid for the services of its attorney [R. 231, 528, 529, 554].

The union was organized with the design of establishing locals in other nursery firms and an effort, though unsuccessful, was made to obtain the affiliation with it of unions in the same industry [R. 219, 341, 579-580]. The officers and members were conscious of the duties and responsibilities of the union. Demands were frequently made upon respondent on behalf of the membership, and substantial benefits were obtained (*supra*, pp. 11, 31). The membership even resolved to recognize legitimate picket lines of other unions [R. 534, 538-539, 558a-559].

The officers and members of the Consolidated were likewise aware of the Wagner Act and sought to prevent any interference with its activities in violation of the Act. Its first president purchased a copy of the Act "to attempt to follow it to the best of our ability, as an independent organization bargaining for the employees" [R. 536]. Whenever it appeared that any member might be holding a supervisory position, his status was investigated, and

if found to be a supervisory employee, he was ousted from the union [R. 672, 676-677, 680, 682]. The record is conclusive that during the frequent bargaining conferences between officers of Consolidated and of respondent, the parties met at arms length. In fact, the union felt that "a little closer relationship" between it and respondent was in order and to achieve this and to acquaint the officers of respondent with the newly elected officers of Consolidated, the union invited the former group of officers to dinner with the latter group [R. 567-568].

During the period of nearly four years covered by the record, respondent did not lift a finger to encourage or assist the Consolidated. The union sought to strengthen its own position by seeking to have respondent grant preferential treatment to members of Consolidated in good standing. Though Meyberg at one time stated that, all other factors being equal, he would favor the members of Consolidated [R. 665-666], actually he never did so [R. 653, 654], and the minutes of the union's meetings are replete with complaints on this score [R. 555-557, 561, 579, 675, 678, 680]. Respondent's position, frequently expressed [R. 336, 504, 557, 561, 655], always was that an employee's status would not be affected by whether or not he was a Consolidated member. Beginning in the fall of 1940, Consolidated began demanding that respondent grant it a closed shop [R. 681-684]. Meyberg has at all times been opposed to a closed shop [R. 259-260, 557, 561], and that demand was not granted the union. "Such action on [respondent's] part is consistent only with Em-

ployer's assertion that it was neutral in fact, and at all times impartial in its attitude toward all unions." *Foote Bros. Gear & Mach. Corp. v. National Labor Relations Board*, 114 F. (2d) 611, 621 (C. C. A. 7th, 1940).

The evidence does not establish that respondent dominated or interfered with the formation or administration of the Consolidated or contributed financial or other support to it, and the Board's finding of a violation of Section 8 (2) was unwarranted. Moreover, a violation of Section 8 (1) was not proved. The statement of Meyberg to Hook and Meyberg's "Statement of Facts" clearly were not improper. The alleged statement of Hill to Thrift did not interfere with Thrift's actions in any way and in any event was a single isolated instance not justifying a finding of the commission of an unfair labor practice. Finally, the evidence does not sustain the Board's contention that respondent gave undeserved credit to the Consolidated for the wage increases of the fall of 1940. It is submitted that the Record will not sustain the Board's findings of violations of the Act and that its petition for enforcement of its order should, therefore, be denied.

II.

**The Board's Order Is Improper and Invalid.**

We submit that the evidence does not warrant the entry of any order against respondent. But even if the Court sustains the Board's finding of a violation of the Act, we believe the Board's order is improper in the following respects :

In the first place, under the principles enunciated in *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 61 S. Ct. 693, 85 L. Ed. 930 (1941), the omnibus cease and desist provision contained in paragraph 1(c) of the order is improper. *National Labor Relations Board v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 789 (C. C. A. 9th, 1941); *The Press Co., Inc. v. National Labor Relations Board*, 118 F. (2d) 937, 954 (C. A. D. C., 1941), cert. den. 313 U. S. 595, 61 S. Ct. 1118, 85 L. Ed. 1548 (1941); *National Labor Relations Board v. Calumet Steel Division of Borg-Warner Corp.*, 121 F. (2d) 366, 371 (C. C. A. 7th, 1941). In the most recent case involving this problem, though violations of subdivision (2) and (3) and apparently (1) of Section 8 were found, the court struck out the omnibus provision in its entirety. *National Labor Relations Board v. Swift & Co.*, 6 CCH Labor Cases ¶ 61,188 (C. C. A. 8th, 1942) (not yet officially reported). We believe that paragraph 1(c) herein similarly should be stricken in its entirety since respondent's violations of the Act, if any, were all in connection with the formation and



administration of the Consolidated. *National Labor Relations Board v. American Rolling Mill Co.*, 126 F. (2d) 38, 42 (C.C.A. 6th, 1942.) In any event, that paragraph should be restricted to the rights interfered with and the manner of respondent's interference.

Secondly, we believe that on the record in this case, it is improper to require the withdrawal of recognition of and the disestablishment of the Consolidated, and that paragraphs 1(b) and 2(a) should accordingly be denied enforcement. Though respondent may be found to have interfered with the formation of the Consolidated, the evidence establishes that long prior to the Board hearing it was free of any employer domination.

Finally, if paragraphs 1 (b) and 2 (a) are retained, we submit that the order should be modified by adding thereto some provision such as the following: "This order does not restrict but is intended to protect the right of the employees freely to join or not to join any labor organization or to form or not to form hereafter a local organization of their own." *Hamilton-Brown Shoe Co. v. National Labor Relations Board*, 104 F. (2d) 49, 56 (C. C. A. 8th, 1939); *Westinghouse Electric & Mfg. Co. v. National Labor Relations Board*, 112 F. (2d) 657, 661 (C.C.A. 2d, 1940) aff'd 312 U. S. 660, 61 S. Ct. 736, 85 L. Ed. 1108 (1941); *National Labor Relations Board v. American Rolling Mill Co.*, *supra*. The natural effect of the Board's order will be to lead those employees of respondent who are not familiar with the circumstances surrounding the organization and administration of the Consolidated to believe that an inside union is improper under the Act.

**Conclusion.**

It is submitted that there is no substantial evidence establishing that respondent has violated either Sections 8 (1) or (2) of the Act, and that the Board's petition for enforcement of its order should be denied. If the Court sustains the Board's findings of fact, nevertheless, paragraph 1(c) of the order should be denied enforcement or at least limited in scope and paragraphs 1(b) and 2(a) should be stricken or, if not, a provision should be added to the order clearly setting forth the right of respondent's employees to remain unorganized or to form another local organization of their own.

Respectfully submitted,

LATHAM & WATKINS,

By PAUL R. WATKINS,

By RICHARD W. LUND,

1112 Title Guarantee Building,

411 West Fifth Street,

Los Angeles, California.

*Attorneys for Respondent.*

July 30, 1942.



## APPENDIX A.

The pertinent provisions of the National Labor Relations Act [Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C., Secs. 151-166 (Supp. II, 1936)] are as follows:

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Sec. 2. When used in this Act—

\* \* \*

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the Dis-



trict of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term “unfair labor practice” means any unfair labor practice listed in section 8.

\* \* \* \* \*

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

\* \* \*

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

\* \* \*

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. \* \* \*

(c) \* \* \* If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States \* \* \* wherein

the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. \* \* \*

## APPENDIX B.

### CHRONOLOGICAL LIST OF MINUTES IN EVIDENCE

Date	Nature of Meeting	Record Page
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September 14, 1937	Employees general meeting	450-456
September 14, 1937	Assemblymen and representatives	456-459
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September 20, 1937	Board of Directors	222-227
September 28, 1937	Board of Directors	227-231
October 5, 1937	Board of Directors	Bd. Exh. 19-A
October 13, 1937	Board of Directors	465-466, 668-670
November 2, 1937	Board of Directors	467
November 9, 1937	General Union Meeting	441-444
December 7, 1937	Board of Directors	671
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January 18, 1938	Board of Directors	672, 525-526, 528
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February 10, 1938	Board of Directors	531-532, Bd. Exh. 23-F, Bd. Exh. 23-B
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October 17, 1938	General Union Meeting	678
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January 3, 1939	Board of Directors	678
January 16, 1939	General Union Meeting	561
March 7, 1939	Board of Directors	Bd. Exh. 29-G
April 4, 1939	Board of Directors	568-569
May 2, 1939	Board of Directors	Bd. Exh. 32-C
September 5, 1939	Board of Directors	569-570
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October 3, 1940	Board of Directors	589-590
October 8, 1940	Board of Directors	592-594
November 6, 1940	Board of Directors	680-681
November 19, 1940	General Union Meeting	681
December 4, 1940	Board of Directors	682
January 8, 1941	Board of Directors	683
February 5, 1941	Board of Directors	683, Bd.Exh. 35-A
March 21, 1941	General Union Meeting	684
April 1, 1941	Board of Directors	684





No. 10,082.

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

*vs.*

GERMAIN SEED AND PLANT COMPANY,

*Respondent.*

CONSOLIDATED SEEDSMEN'S UNION, INC.,

*Intervenor.*

---

BRIEF OF INTERVENOR CONSOLIDATED  
SEEDSMEN'S UNION, INC.

---

JOSEPH L. FAINER and

RUSSELL E. PARSONS,

408 Washington Building, Los Angeles, California,

*Attorneys for Consolidated Seedsmen's Union.*

**FILED**

**OCT - 9 1942**



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CONSOLIDATED SEEDSMEN'S UNION, INC.,

*Intervenor.*

---

BRIEF OF INTERVENOR CONSOLIDATED  
SEEDSMEN'S UNION, INC.

---

**Jurisdiction.**

This case is before the Court on petition of the National Labor Relations Board for enforcement of its order issued against the respondent, Germain Seed and Plant Company, pursuant to Section 10(c) of the National Labor Relations Act (49 Stat. 449 (1935)), 29 U. S. C. Secs. 151-166. [Supp. II. 1926.]

The jurisdiction of this court is based on Section 10(e) of the Act. The Intervenor in this case is the Independent Union sought to be dissolved and disestablished by order of the National Labor Relations Board and the

Intervenor, Independent Union, respectfully asks permission of this Court to file its brief and to intervene in this matter that it may be heard and, while this comes at a late date, it will more fully appear by the affidavit in support of its motion to intervene, that the said Independent Union had no proper notice and therefore comes into court at this late date. The Independent Union realizes that such an order, if sustained, will sound its death knell and therefore respectfully asks permission to be heard.

In the interest of brevity we respectfully ask that the brief of the respondent Germain Seed and Plant Company may also be considered in support of our position and we will not herein reiterate anything therein said.

### **Statement of the Case.**

We respectfully ask that the statement of the case in the respondent's brief may be considered as a statement of the case in so far as it applies to the intervenor, with the following addition that, as hereinbefore set forth, we come into Court at this late date because of the fact that no proper notice was ever served upon the Independent Union so far as its officers know and until they received a letter under date of August 31, 1942 from the National Labor Relations Board which said letter is set forth in the affidavit in support of the Motion to Intervene, the Independent Union was not advised that these appellate proceedings were pending, and immediately thereafter, as set forth in the affidavit, the Independent Union, your intervenor, sought out counsel of its own choosing with the purpose of attempting at this late date to protect its interests.

## ARGUMENT.

The Board's Findings of Fact From Which it Concludes Respondent Has Violated Sections 8(1) and (2) of the Act Are Not Supported by Substantial Evidence.

The Independent Union, your intervenor, respectfully asks that the argument advanced in respondent's brief be considered in its behalf and in addition thereto will urge the following in support of its position: That the Board's findings of fact are not supported by substantial evidence.

The respondent's brief contains a concise and thorough statement of the facts with the exception of a more complete resumé of the testimony of the Independent Union's then attorney, Mr. Voorhees, which testimony is set out more fully hereinafter. We do, however, respectfully point out to your Honors, the case of *National Labor Relations Board v. Standard Oil Company, a corporation, et al.*, decided November 11, 1941, by the United States Circuit Court of Appeals, Tenth District, cited in C. C. H. Labor Cases. Vol. 5, 60751; 124 Fed. (2d) 895. In that case the facts, briefly, were that there had been in existence what was known as "The Plan," but after the Wagner Act's constitutinality had been established by the courts, this organization was disestablished by the Company; that that organization had been supported and aided by the Company there was no doubt; and thereafter certain employes of the Company set about forming an organization of their own and, as was said by the Court in its review of the evidence:

"While the initial organizational meeting was held on April 27, 1937, the employees, in working out

their new Employees' Organization proceeded deliberately. The By-Laws were not adopted until May 4, 1937. Officers and directors were not elected until May 7, 1937, and it was not until August 19, 1937, that a majority of the employees decided to join the Association and employ it as their bargaining representative. In the period that intervened Standard maintained a neutral attitude and followed the 'hands off' policy. The record is devoid of any proof that Standard, from April 27th to August 19th in anywise encouraged membership in the Association or interfered with its management. There was some evidence that Astin, who possessed some supervisory authority but no power to hire, discharge or discipline, solicited a few members for the Association on the plant during working hours. There was no evidence that the Standard had knowledge thereof. Standard had instructed its officers and supervisory employees to refrain from any labor organization activities and to maintain a neutral attitude; had prohibited solicitation of membership on the plant during working hours, and had publicised that fact by notice on the bulletin board. This isolated act of Astin, neither authorized nor encouraged by Standard, and in violation of its express instructions, ought not to be imputed to Standard (citing *National Labor Relations Board v. Whittier Mills Co.*, 111 Fed. (2d) 474-479; *E. I. Dupont de Nemours & Co. v. National Labor Relations Board*, 116 Fed. (2d) 388 at 400), and affords no ground, we think, for the annihilation of a labor organization freely organized by the employees, and freely chosen by a majority of them as their bargaining representative."

In the *Standard Oil* case, *supra*, the Court had this further comment to make upon the rights granted to workers by the Act:

“The Act guarantees to the employees the right to self-organization, to form or join a labor organization, and to bargain collectively through representatives of their own choosing. This freedom of choice embraces both local and affiliated organizations and where the employees freely choose a local organization, it is not either for the Board or us to say whether they choose wisely or otherwise (citing cases: *National Labor Relations Board v. Newport News S. & D. D. Co.*, 308 U. S. 250).

“Standard employees had the right to form the Association and to join the same immediately after the disestablishment of the Plan. (Citing cases: *Humble Oil & Refining Co. v. National Labor Relations Board*, 113 F. (2d) 85, 88; *Brown Paper Mill Company*, 108 F. (2d) 867, 871; *Magnolia Petroleum Co. v. National Labor Relations Board*, 112 F. (2d) 545, 552.)”

In the case of *National Labor Relations Board v. Standard Oil Company*, *supra*, the court had this further to say with reference to findings of the Board and how they must be supported:

“Section 10(e) of the Act provides: ‘The findings of the Board as to the facts, if supported by evidence, shall be conclusive.’ This means ‘evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reason-



ably inferred.’ ‘Substantial evidence is more than a scintilla and must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ ‘It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.’ (Citing cases: *National Labor Relations Board v. Columbian E. & S. Co.*, 306 U. S. 292, 299; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *Continental Oil Co. v. National Labor Relations Board*, 113 Fed. (2d) 473, 481.)

“ ‘When the evidence is consistent with either of two inconsistent hypotheses, it establishes neither.’ (Citing cases: *Nevada Consolidated Copper Corporation v. National Labor Relations Board*, 122 F. (2) 587; *Bussmann Mfg. Co. v. National Labor Relations Board*, 111 F. (2) 783, 787; *Cupples Co. Manufacturers v. National Labor Relations Board*, 106 F. (2) 100, 114.”

We sincerely urge that the evidence in this case not only does not support the findings of the Board, but we urge that the evidence shows affirmatively that this Independent Union was, in truth and in fact honestly organized, honestly and independently conducted, and is entitled to live. It appears that the officers and all members were fully advised of the import of the Wagner Act, and independently acted at all times. In fact the president, who was elected at the organization of the Independent Union, even purchased a copy of the Act [R. 536]. There is evidence that employees who were thought to be

in a supervisory capacity, were ousted [R. 672, 676, 677, 680, 682]. There is evidence that the officers were particularly active in attempting to learn and know all they could with reference to the operations of such unions in order that they might better discharge their obligations to their members; and at one time one group of officers even met with a previous group in the hope that they might better learn the problems that confronted them [R. 567, 568].

As proof of the substantially independent character of the Independent Union, we direct your Honors' attention to the demands made by the Independent Union that it be granted a closed shop, which were pressed diligently [R. 259, 260, 557, 561]. The only conclusion that could be reached, that is to say reasonable conclusion, from such testimony and evidence, is that in truth and in fact the intervenor was an independent union demanding for its membership those things to which they thought they were entitled, and no doubt a serious conflict ensued between the independent union and the respondent. Had the respondent, in truth and in fact, dominated the Independent, no such demand would ever have been made upon the respondent. There is no other reasonable deduction to be reached.

The Independent Union not only attempted to further the interests of its membership and conducted repeated negotiations with the management, but did in fact make considerable progress for its membership. [See R. 358, 359; 350, 351: 622, 623: 637, 638: 364, 365; 623: 340, 341; 360, 361; 349; 519; 602, 603; 589, 590; 592, 594.] As a result of all of these activities substantial gains were made by the Independent Union.

In further support of our contention that there is no substantial evidence to justify the findings of the Board, we respectfully direct your attention to the testimony of J. P. Voorhees, found at page 209 of Volume 1 of the transcript of record. Mr. Voorhees testified that he was an attorney in the City of Los Angeles, and testified with reference to the organization of the intervenor Independent Union, the pertinent parts of his testimony in our opinion being as follows:

“Q. Do you recall this meeting as to which he testified that you were present and spoke? A. You mean the meeting at the warehouse?

Q. Yes. A. Yes, I remember that.

Q. Do you remember what you said at that time? A. In general, yes. Specifically, no.

Q. Well, what was the substance of what you said? A. The substance of what I said was that the employees had a right to form or join any union that they pleased, without the employer having any voice in the matter, and that they had a right to belong to any organization that they might desire, that they could form an independent union if they wished and that there were some independent unions in Los Angeles at that time; and that the dues in an independent union were considerably smaller than the dues in other unions, and that they would be able to control and operate their union without the aid of any business agent or outside help, and that if they would form such an independent union, I would advise them to form under the non-profit corporation laws of this state, so that none of them would be personally liable for any of the debts of the organization or any liabilities of the organization.

Q. Is that all you said, as you recall, or the substance of what you said? A. Well, I believe that my memory was refreshed by the testimony of this last witness. I believe I told them that the only persons eligible to belong to a union were the workers, and that those who had the right to hire or fire or discipline employees, or who were in executive positions, did not have the right to belong to any union. And I believe that someone at that time did define his duties to me, and I informed him that he was not eligible to belong to the union and should not participate in that meeting. I have just a hazy recollection of that, which was refreshed entirely from this last witness' testimony.

Q. Do you recall whether or not you were the only speaker at this meeting? A. On that point I also have a hazy recollection, and I would say, with qualifications, without being certain, that Mr. Stratton was present and spoke. What he said I have no recollection at all.

Q. Can you identify Mr. Stratton any further, as to the position he held at that time? A. Mr. Stratton at that time was the secretary and business agent of the independent union at the Cudahy Packing plant.

Q. You don't recall what Mr. Stratton said? A. I do not.

Q. Do you recall anything of what he said? A. Very hazily. I think he told them something about the way in which the independent union at Cudahy's was being operated.

Q. Mr. Voorhees, do you recall anything of the Hill Street store meeting, which was referred to in the testimony of Mr. Sage? A. Yes. The Hill Street store meeting was called after the articles of

incorporation had been signed and sent to Sacramento and were returned, and I believe after the by-laws had been adopted by the incorporators, and was called for the purpose of explaining to the employees what had been done by the incorporators and to let them determine whether they wished to become members of the organization, to explain to them the by-laws and to permit them to decide whether they wished to join.

I recall that someone in the group—at that time there were far more employees present than were present at the meeting in the warehouse—and at that time someone asked the same question, as to who was eligible to belong to the union, and I gave them the same answer, that a person who had the right to hire or fire or to discipline employees or who was in an executive position could not belong to the union. And several of them, I believe, contended that Mr. Sage was in that position, and I stated that since they felt he was in that position or occupied some position of that character, that he had no right in the meeting whatsoever, and I asked him to leave the meeting and leave the building, I believe.

Q. Do you recall whether or not you excluded anyone else? A. I don't know that I did, but I can't recall positively. It seems to me that there was one other person who placed himself or who thought he might be in that category; one or two others. Now, I can't remember.

Q. Do you recall who presided at this Hill Street store meeting? A. Well, Mr. Sage introduced me and I started explaining the articles and by-laws, and then someone raised this question. I believe one of the incorporators presided.



Q. Mr. Frauenberger? A. Well, I say yes, with qualifications. I can't remember his name, but someone—

Q. Do you recall what he looked like? A. No, I don't.

Q. Mr. Voorhees, do you recall whether or not at the conclusion of this Hill Street store meeting an election was held? A. I don't recall of any election being held. It seems to me that there was a motion of some sort to accept the by-laws or to approve the by-laws and to become members of the organization.

Q. You don't remember whether or not there was any election? A. Of officers, do you mean?

Q. No, of accepting the union. A. Well, as I say, I think there was a motion—

Q. Yes. A. —to the effect that the acts of the incorporators be approved, and that the by-laws be approved, and that they become members of the organization. I think the minutes would speak for themselves. At least, they should. There should be a record there, should be minutes of that meeting. In fact, I think I found the minutes a moment ago when I was looking in the minute book.

Q. (By Mr. Cobey): Mr. Voorhees, am I to understand that you acted as attorney for this union throughout the period of its establishment? In other words, you handled the legal end of the setting up of this union? A. Well, your question isn't quite clear. What I think you mean is this: Was I retained by them all of the time?

Q. Yes. A. No, I was not. I was employed to draw up their articles of incorporation and their by-laws, and to explain the by-laws and the articles, and on two or three occasions thereafter some of-

ficer or director of the corporation talked with me. I believe on one occasion or two occasions the Board of Directors came to my office and consulted with me. I did not consider I was retained as their attorney. They, as occasion required, saw fit to consult with me further.

Q. Well, did you or did you not draft the articles and the by-laws for the union? A. Oh, yes.

Q. And the other organizational documents? A. Well, what do you mean by 'other organizational documents'?

Q. Well, I show you Board's Exhibit 3, for identification, headed 'preorganization agreement.' Do you recall whether or not you drafted that? A. I believe that I did. I believe that I drafted the portion appearing above the signatures."

We next direct your attention to Board's Exhibit 3, found on page 216 of the transcript of record, Volume 1, which was a preorganization agreement. Then on page 217 of the transcript of record, Volume 1, will be found the Articles of Incorporation, and on page 218 are specifically set out the purposes for which the corporation was organized. On page 221 will be found the Minutes of the First Meeting of Incorporators, and on page 222 the First Meeting of the Directors.

All of such testimony by the attorney Voorhees demonstrates without contradiction that the formation of the Independent Union was a voluntary act upon the part of those seeking to set up this union,—namely, the workers in respondent's plant: and they were properly and honestly advised as to what the law was, and acted accordingly.

**Conclusion.**

We respectfully submit that the evidence is not sufficient to sustain the findings of the Board, and that the order of the Board should be reversed and not enforced.

Respectfully submitted,

JOSEPH L. FAINER and  
RUSSELL E. PARSONS,

By RUSSELL E. PARSONS,

*Attorneys for Consolidated Seedsmen's Union.*



No. 10187

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

JULIA C. COLLINS and HATTIE L. MOSHER,  
Appellants,

vs.

JOE O'CONNELL and JESSIE B. O'CONNELL,  
husband and wife,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Arizona

FILED

1957-5-1942

PAUL F. O'BRIEN,

CLERK





No. 10187

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United States  
Circuit Court of Appeals  
For the Fifth Circuit.

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JULIA C. COLLINS and HATTIE L. MOSHER,  
Appellants,  
vs.

JOE O'CONNELL and JESSIE B. O'CONNELL,  
husband and wife,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Arizona



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

PLATT, HENDERSON, WARNER & CRAM,  
1115 Porter Building,  
Portland, Oregon;

E. E. SELDEN,  
612 Luhrs Tower,  
Phoenix, Arizona;

NOAL R. GRAY,  
301 Phoenix National Bank Building,  
Phoenix, Arizona;  
Attorneys for Appellants.

GUST, ROSENFELD, DIVELBESS, ROBIN-  
ETTE & COOLIDGE,  
201 Professional Building,  
Phoenix, Arizona,  
Attorneys for Appellees. [3\*]

In the Superior Court of Maricopa County  
State of Arizona

No. 48347, Div. 1

JOE O'CONNELL and JESSIE B. O'CONNELL,  
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS, and HATTIE L. MOSHER,  
Defendants.

### COMPLAINT

Come now the plaintiffs, Joe O'Connell and Jessie B. O'Connell, his wife, and complain of Julia C. Collins and Hattie L. Mosher, the defendants, as follows, to-wit:

#### I.

That on the 24th day of February, 1913, J. Gerard, a widow, was the owner and in possession of that certain parcel of real estate situated in the City of Phoenix, County of Maricopa, State of Arizona, described as:

Lot Two (2) in Block Three (3) of Churchill Addition, and addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

#### II.

That on said 24th day of February, 1913, said J. Gerard, a widow, by warranty deed, recorded in the

office of the County Recorder of Maricopa County, Arizona, on March 1, 1913, in Book 102 of Deeds, at page 90, conveyed the above described premises to Greene and Griffin Real Estate and Investment Company, a corporation. [4]

III.

That thereafter on July 1, 1914, said Greene and Griffin Real Estate and Investment Company, a corporation, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on July 9, 1914, in Book 110 of Deeds, at page 179 conveyed said premises to Hattie L. Mosher, a widow.

IV.

That thereafter on March 1, 1929, said Hattie L. Mosher, a widow, executed a note for the principal sum of Six Thousand (\$6,000.00) Dollars to Elsie B. Ganz, a widow, and to secure the payment of said note said Hattie L. Mosher executed and delivered to said Elsie B. Ganz a realty mortgage on the above described premises, dated March 1, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481.

V.

That said Hattie L. Mosher neglected and refused to pay said note when the same became due and thereafter, on or about the 16th day of September, 1931, said Elsie B. Ganz filed a suit against the said

Hattie L. Mosher to foreclose said mortgage; and that such proceedings were had in said foreclosure suit that a judgment was regularly entered in said suit, foreclosing the said mortgage and directing the premises therein described to be sold in satisfaction of the indebtedness represented by said note; and in pursuance of said judgment, an execution and order of sale was issued and said premises were ordered sold and were purchased by said Elsie B. Ganz, plaintiff in said suit, and that neither the said Hattie L. Mosher nor anyone else redeemed from said sale and after the time for redemption had expired, to-wit, on or about the 27th day of October, 1932, a sheriff's deed was duly issued by the [5] sheriff of Maricopa County, Arizona, conveying the above-described premises to the said Elsie B. Ganz, said sheriff's deed being recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932, in Book 270 of Deeds at page 313.

#### VI.

That thereafter, on or about, May 1, 1934, the said Elsie B. Ganz, a widow, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on June 6, 1934, for valuable consideration, conveyed the above-described premises to the plaintiffs herein.

#### VII.

That plaintiffs immediately upon said conveyance last-mentioned being made took possession of said



premises under said conveyance, and ever since said date, have been in possession of said premises, claiming the title thereto as against the whole world; and that such possession has been a visible and open and exclusive appropriation of said premises; and that plaintiffs since said date have paid the taxes upon the above-described premises.

### VIII.

That the defendants claim some right, title or interest in, or lien upon the above-described premises and have cast a cloud upon the title of plaintiffs to said premises by certain proceedings had and conducted between themselves in the United States District Court, for the District of Arizona, and by placing of record a purported special master's certificate of sale on foreclosure and a deed of special master purporting to convey the purported interest of the said Hattie L. Mosher in said premises to the said Julia C. Collins; that said purported proceedings and purported special master's certificate of sale on foreclosure and said deed [6] of special master are wholly without right and were made for no purpose except to cloud the plaintiff's title to said premises.

### IX.

That plaintiffs have been damaged by the placing of said proceedings and instruments above described of record in the sum of Two Hundred (\$200.00) Dollars; and that the acts of the defendants in creating said cloud upon plaintiffs' title were done with

the express purpose and intent of harassing and injuring the plaintiffs; and that defendants should be held responsible in exemplary damages in the sum of Five Hundred (\$500.00) Dollars on account of their intentional wrongful acts above alleged.

Wherefore, plaintiffs pray for judgment adjudicating and decreeing that the plaintiffs are the owners, in fee simple, of the above-described premises; and that defendants have no right, title, claim or interest therein, or lien thereon; and that the purported foreclosure proceedings, special master's certificate of sale on foreclosure, and deed of special master have no validity and have no force and effect as against the title of the plaintiffs; and for the sum of Two Hundred (\$200.00) Dollars actual damages; and the sum of Five Hundred (\$500.00) Dollars exemplary damages; and such other and further relief as the court may deem proper.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE & COOL-  
IDGE,

201 Professional Building,  
Phoenix, Arizona.

By J. L. GUST,  
J. L. GUST,

Attorneys for Plaintiffs. [7]

(Duly verified.)

[Endorsed]: Filed Jan. 30, 1940. [8]

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL TO UNITED STATES  
DISTRICT COURT

This Court Now Orders this cause numbered 48347, Division 2, removed to the United States District Court for the District of Arizona, for the reason that:

Julia C. Collins, a non-resident defendant herein, being a resident of the State of Oregon, residing at Portland, Oregon, who has a separable controversy from that of the other defendant in this action; the said Hattie L. Mosher having no right, title, or interest in the property set forth in the complaint as is clearly shown by the pleadings in the plaintiff's complaint; has filed her Petition for Removal, her Bond for Removal, and given Notice thereof, all in due form and within the required time, and all as provided by the laws and rules of both courts, and in accordance with the statutes, and

It Appearing to This Court that this is a proper cause for removal and that the acts complained of by plaintiffs were done and committed in the said Federal Court, as shown in plaintiffs' complaint;

Therefore, It Is Ordered that no further proceedings be held in the Superior Court of Maricopa County, Arizona, and the Clerk of said Court is Ordered to prepare a certified record and transmit the same to the Federal Court within the time prescribed by law, and to enter a Minute Order showing this removal.

Done in Open Court April 10th, 1940.

G. A. RODGERS,  
Presiding Judge. [9]

[Endorsed]: Filed April 29, 1940. [10]

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In the District Court of the United States  
For the District of Arizona  
Civil 114—Phoenix

JOE O'CONNELL and JESSIE B. O'CONNELL,  
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS, and HATTIE L. MOSHER,  
Defendants.

#### NOTICE OF REMOVAL

To the Plaintiffs, Joe O'Connell and Jessie B. O'Connell, his wife, and Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, their attorneys:

Notice is hereby given that the defendants have removed the above entitled cause to the District Court of the United States in and for the District

of Arizona and the record on removal has been filed with the Clerk of said court.

GEORGE F. MACDONALD,  
Attorney for Defendants,  
507 Luhrs Tower,  
Phoenix, Arizona.

Received copy of the within Notice this 28th day of May, 1940.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE & COOL-  
IDGE,  
Attorneys for Plaintiffs.

[Endorsed]: Filed May 28, 1940. [11]

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[Title of District Court and Cause.]

### AMENDED ANSWER

Come Now the defendants, Julia C. Collins and Hattie L. Mosher, and for their Amended Answer to the plaintiffs' complaint, admit, deny and allege, as follows, to-wit:

#### I.

Admit the allegation in plaintiff's complaint that February 24th 1913 J. Gerard was the owner and in possession of Lot Two (2), Block Three (3), of Churchill Addition to the City of Phoenix.



## II.

Admit the transfer of the said lot set forth in Paragraph II of plaintiffs' complaint and allege that in connection with that transfer the grantee therein, as a part of the transaction, and as a part of the purchase price, executed and delivered to J. Gerard, the grantor therein, that certain Realty Mortgage for \$9,000.00 of record in the office of the Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at Page 303.

## III.

Admit the conveyance of the said premises to Hattie L. Mosher, a widow, which said premises were subject to the \$9,000.00 Realty Mortgage executed by the Greene & Griffin Real Estate and Investment Company, a corporation, to J. Gerard.

## IV.

Answering Paragraph IV of plaintiffs' complaint these defendants allege that at the solicitation of the agent and attorney [12] of Elsie B. Ganz that Hattie L. Mosher executed a note and mortgage for \$6,000.00 to Elsie B. Ganz and delivered the same to the said agent and attorney together with her check for \$28.50 of which sum \$3.50 was for recording the mortgage and \$25.00 was for the commission of the said agent and attorney who then delivered to the said Hattie L. Mosher a check for \$6,000.00 on the National Bank of Arizona informing her, at that time, that the interest checks were to be delivered to the said bank.

Defendants further allege that the said Mosher procured an abstract to be made by a Title Company who delivered it to the said agent and attorney of Elsie B. Ganz. That the records of the office of the Recorder of Maricopa County, Arizona, affirmatively showed that at the time of the execution of the \$6,000.00 mortgage to Elsie B. Ganz that the premises in question were subject to the previous mortgage of \$9,000.00 given to J. Gerard.

Defendants further allege that an extension of the \$9,000.00 mortgage to J. Gerard was made October 7, 1918 to February 24, 1928.

Defendants further allege that October 7, 1919 Julia Mosher Collins purchased the said mortgage of J. Gerard taking an assignment thereof from the said J. Gerard.

#### V.

Answering Paragraph V of plaintiffs' complaint these defendants deny that the Ganz mortgage was due as it was written March 1, 1929, to run for three (3) years and allege that the interest had been paid but admit that September 16, 1931, for some technical reason, Elsie B. Ganz brought suit to foreclose her second mortgage and a purported sheriff's deed was issued to her which was recorded as alleged in Paragraph V of plaintiffs' complaint.

However, in this connection, these defendants allege that Julia Mosher Collins, the mother of the defendant Julia C. Collins, died May 4, 1920, intestate, that Julia C. Collins was the sole [13] heir to the

private property of her mother and was her only child. That there were no debts owing by the said Julia Mosher Collins and so no probate of her estate and that although the defendant, Julia C. Collins, was the sole heir of Julia Mosher Collins and the sole owner of the aforesaid first mortgage after the death of her said mother, she, the defendant Julia C. Collins was not made a party to the foreclosure suit brought by the said Elsie B. Ganz for her \$6,000.00 second mortgage as set forth in Paragraph V of plaintiffs' complaint.

That the assignment of the \$9,000.00 Gerard mortgage, made by J. Gerard to Julia Mosher Collins, October 7, 1919, after the payment by the said Julia Mosher Collins to the said J. Gerard, of the sum of \$9,000.00 in cash, was duly recorded in Book 7, of Assignment of Mortgages, at page 159. That the extension of the mortgage had been previously recorded in the office of the Recorder of Maricopa County, Arizona, in Book 114, of Mortgages, at Page 361.

That at the date of the death of Julia Mosher Collins, the mother of defendant Julia C. Collins, the said Julia Mosher Collins was the owner of the assignment hereinabove described.

That James D. Collins, the husband of Julia Mosher Collins, and the father of Julia C. Collins, has no right, title nor interest in and to said assignment of mortgage, as above set forth, for the reason that he has received his distributive share of the estate of Julia Mosher Collins, deceased, by accepting payments of funds from the separate estate of

said Julia Mosher Collins, deceased, in full satisfaction of all his right, title and interest in and to said note and mortgage herein set forth, which said payments were made to the said James D. Collins after the death of Julia Mosher Collins the mother of the defendant Julia C. Collins.

That the defendant Julia C. Collins under and by virtue of [14] the laws of descent and distribution and by reason of the payments to the said James D. Collins out of the proceeds of the separate estate of Julia Mosher Collins, was at all times material hereto the owner of the aforesaid first mortgage, which has now been foreclosed, as hereinafter alleged, vesting title in the defendant Julia C. Collins, in fee simple.

## VI.

Answering Paragraph VI of plaintiffs' complaint defendants admit that the said Elsie B. Ganz executed a purported deed of conveyance to the plaintiffs herein but allege that the purported deed contained many restrictions.

## VII.

Answering Paragraph VII of plaintiffs' complaint these defendants deny that these plaintiffs ever took possession under the purported conveyance, or that they have ever been in possession of the said premises under the purported conveyance from Elsie B. Ganz, and deny that they are now in possession thereof. In this connection these defendants

allege that on the 17th day of September, 1931, the defendant, Hattie L. Mosher, entered into a written lease with the O'Connell Brothers, Inc., a corporation, for the premises described in Paragraph I of plaintiffs' complaint for a term of five years from October 1st, 1931; with possession given immediately on the signing of the said lease; at a monthly rental of Seventy Five Dollars (\$75.00), payable in advance, with the option to renew said lease for an additional two years at a monthly rental of One Hundred Dollars (\$100.00), and a clause that rent was to be paid so long as occupied.

That in addition to the monthly rental in said lease, the O'Connell Brothers, Inc., a corporation, agreed to pay all taxes, assessments and new improvement assessments levied against said above described premises from October 1st, 1931, until lease ended. [15]

Further answering Paragraph VII of plaintiffs' complaint the defendants deny that the plaintiffs have complied with any provision of the Code of 1928, and amendments thereto, or any subsequent enactment of the legislature of Arizona, entitling them to a decree quieting the title in the plaintiffs to the property described in paragraph I of their complaint, and particularly allege that they have failed to pay the taxes assessed against said property for at least five (5) consecutive years next preceeding the institution of their action, and allege further, to-wit:

That plaintiffs have attempted to bolster their



claims by entering into a conspiracy with the Assessor of Maricopa County, Arizona, to complete the Five Year Period of Tax Paying under which they appear to claim title in Paragraph VII of their complaint by procuring the said Assessor to continue the assessing of the said property in the name of Joe O'Connell.

That Plaintiffs attempted to enter into a similar conspiracy with the Assessor of the City of Phoenix, Arizona, but failed in their attempt.

Further, these defendants allege that the defendant, Julia C. Collins, was an infant at the time of the death of her mother, Julia Mosher Collins, May 4, 1920, and that said defendant was still an infant in 1934 when plaintiffs allegedly took possession of the premises in dispute and that Five (5) Years have not elapsed since said defendant, Julia C. Collins, reached the age of twenty-one (21) years, thus coming of age.

#### VIII.

Answering Paragraph VIII of plaintiffs' complaint the defendants admit that Julia C. Collins claims some interest in the property described in Paragraph I of plaintiffs' complaint and allege that:

February 24, 1913—J. Gerard, the then owner of Lots 1 & [16] 2, Block 3, Churchill Addition to Phoenix, Arizona, sold the said lots to the Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, and took as part pay-

ment therefor a mortgage and note for \$9,000.00 from the said Greene & Griffin.

February 24, 1913—Date of the mortgage for \$9,000.00 executed by the Greene & Griffin Investment Company, a corporation, to J. Gerard. Recorded May 29, 1913, in Book 85, of Mortgages, on Page 303.

July 1, 1914—The said Greene & Griffin sold the said lots to Hattie L. Mosher, a widow, subject to the mortgage for \$9,000.00. Recorded in Book 110, of Deeds, at Page 179.

October 7, 1918—The said \$9,000.00 mortgage was extended to a further period of approximately ten (10) years, namely to February 24, 1928. This Extension was recorded in Book 114, of Mortgages, at Page 361.

October 7, 1919—J. Gerard sold the said mortgage to Julia Mosher Collins, receiving therefor the sum of \$9,000.00, cash, from the said Julia Mosher Collins, the mother of the defendant herein, Julia C. Collins, at which time the said J. Gerard executed and delivered to the said Julia Mosher Collins an Assignment of the said mortgage, which was immediately placed of record in Book 7, of Assignments of Mortgages, at Page 159, thereof.

All instruments set forth in this paragraph being of record in the Office of the Recorder of Maricopa County, State of Arizona.

Defendants further allege that May 8, 1935, that Julia C. Collins, by and through her Guardian ad litem, filed a Complaint for foreclosure of the said

\$9,000.00 mortgage in the District Court of the United States, District of Arizona, the same being Equity—319. That a Second Amended Complaint was filed December 30, 1935. It is further alleged that for the purpose of giving Actual Knowledge, in addition to the Constructive Knowledge they [17] already had by and through the Official Records of the Office of the Recorder of Maricopa County, Arizona, Joe O'Connell and Jessie B. O'Connell, his wife, were made party defendants in Equity—319. Plaintiffs further allege that as the said Joe O'Connell held his purported title under Elsie B. Ganz, who held a purported Sheriff's deed in the Action in the Superior Court of Maricopa County, State of Arizona, numbered 35462, therein, in which Elsie B. Ganz had proceedings to foreclose her Second Mortgage against the property set forth in the action at bar, and whereas the said Elsie B. Ganz had not made Julia C. Collins, the owner and holder of the First Mortgage, a party defendant, in No. 35462, the said Joe O'Connell and wife were not proper parties in the Foreclosure Proceedings set forth in Equity 319 and were dismissed therefrom.

That the said Joe O'Connell and wife drew down the \$5.00 deposit remaining with the Clerk of the Court, that they had advanced, and that although the Decree against Hattie L. Mosher had been signed July 20, 1936, by the Judge of the Court, and the final Judgment of Foreclosure signed by the judge December 28, 1936, and over a month had elapsed since the dismissal of O'Connell and wife,

before the Final Judgment was signed, they made no effort to intervene, or again install themselves in the action, as was their legal right, did they consider that they had any interests in the disputed property foreclosed by Julia C. Collins under her lien.

That the Judgment was filed January 11, 1937 and thereafter, January 20, 1937, a Transcript of this judgment, certified by the Clerk of the United States District Court, District of Arizona, was filed and recorded in Judgment Book 1, at Page 288, of Judgments, in the Recorder's Office of Maricopa County, Arizona.

These defendants further allege that after six months had expired after the filing of the judgment in Equity 319, namely February 13, 1939, and given by the Clerk of the Court an Execution of Judgment

[18]

and Order of Sale in Equity 319, was obtained, and acting thereon, the Special Master, appointed by the Court in the Judgment filed January 11, 1937, advertised and posted the property for sale, and March 17, 1939, the property was sold to Julia C. Collins. March 19, 1939 the Special Master filed his Return on Order of Sale and Writ of Execution. March 31, 1939, the Order Confirming sale was signed by the Judge of the Court. March 31, 1939, the Special Master executed the Special Master's Certificate of Sale on Foreclosure, and the same day, March 31, 1939, this said Certificate was placed of record in Book 57, of Miscellaneous Records, at Page 549. Thereafter, after the Six Months Period of Redemption had expired and no Notice to Re-

deem had been filed, namely, October 2, 1939, a Deed of Special Master was executed by the duly appointed Special Master, to Julia C. Collins, for the premises set forth in the instant case, and the same day, October 2, 1939, the said deed to Julia C. Collins was recorded in Book 337, of Deeds, at Pages 148 and 149. That the Correct amount of Revenue Stamps were placed thereon and cancelled by the Special Master in the presence of the Notary.

Defendants further allege that the deed from Elsie B. Ganz to Joe O'Connell, recorded in Book 283, of Deeds, at Page 192, thereof, was subject to the following exceptions:

All State, County, and City real and personal taxes.

Street Paving Lien.

The rights of O'Connell Brothers under their lease.

A certain judgment against Hattie L. Mosher.

Defendants further deny that any of said proceedings in the United States District Court, for the District of Arizona, were had in order to cloud the plaintiffs' title and in this connection allege that said proceedings, as brought and maintained by the Guardian ad litem of Julia C. Collins, were had in order to foreclose the mortgage held by the defendant Julia C. Collins and vest the [19] title in her and she is now the lawful owner of said premises in fee simple as evidenced by the various instruments leading up to, and including, the deed to her by said



Special Master issued in Cause in Equity No. 319, in this court.

IX.

Answering Paragraph IX of plaintiffs' complaint these defendants deny that the plaintiffs were damaged in any manner by the lawful acts of the Guardian ad litem of Julia C. Collins, or by the lawful acts of these defendants, or either of them, and deny that plaintiffs are entitled to any damages whatsoever against these defendants, or either of them.

Wherefore, defendants pray the plaintiffs take nothing by their complaint and that these defendants go hence with their costs and accruing costs and interest thereon.

PLATT, HENDERSON, WAR-  
NER & CRAM,

By WILBER HENDERSON,  
Attorneys for Defendants.

1115 Porter Building,  
Portland, Oregon.

E. E. SELDEN,  
612 Luhrs Tower,  
Phoenix, Arizona.

Local Associate Attorney for  
Platt, Henderson, Warner  
& Cram

Received copy of within instrument this 7th day of March, 1941.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE & COOL-  
IDGE,

Attorneys for Plaintiff. [20]

(Duly Verified.)

[Endorsed]: Filed Mar. 7, 1941. [21]

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[Title of District Court and Cause.]

MOTION FOR SUPPLEMENTAL ANSWER  
AND NOTICE THEREOF

Comes now the Defendant, Julia C. Collins, and moves the Court for permission to file a proposed Supplement to the Amended Answer. Said proposed Supplement to the Amended Answer is annexed hereto and made a part hereof.

PLATT, HENDERSON,

WARNER & CRAM,

11th Floor, Porter Building,  
Portland, Oregon.

Attorneys for Julia C. Collins  
of Portland.

By E. E. SELDEN,

Sixth Floor, Luhrs Tower,  
Local Associate Attorney for  
Julia C. Collins in Phoenix,  
Arizona.

## NOTICE

To Joe O'Connell and Jessie B. O'Connell and J. L. Gust, for their Attorneys;

You and each of you will please take notice that the foregoing Motion to which is attached the proposed form of supplement to the Amended Answer will be filed and thereby submitted to the Court for his decision in due course as provided by law.

E. E. SELDEN,  
Local Associate Attorney for  
Julia C. Collins.

---

ORDER

It is hereby ordered that the Defendant, Julia C. Collins, is permitted to file the Supplement to the Amended Answer, a copy of which, and the Notice therefor, have been duly served, and Plaintiff having the usual time to reply thereto.

Done in Open Court March . . . , 1941.

.....  
Judge.

Received copy of above Motion, Notice, and Order,  
March 17th, 1941.

By J. L. GUST,  
Attorneys for Joe O'Connell  
and Wife. [22]

[Title of District Court and Cause.]

SUPPLEMENT TO AMENDED ANSWER

Comes now the Defendant, Julia C. Collins, and for an Additional Answer Supplementary to her Amended Answer in the above entitled cause alleges:

That the Assignment from Julia Mosher-Collins to James Dean Collins executed on the 1st day of March, 1920, and recorded in the Office of the Recorder of Maricopa County, Arizona, in Book 8, of Assignments of Mortgage, on Page 372, was filed and recorded at request of Hattie L. Mosher April 18, 1921, at 1:11 P.M. over a year subsequent to its Execution and approximately a year after the death of Julia Mosher-Collins, and:

That the said Assignment was never delivered to James Dean Collins, and:

That the said Assignment was executed without the knowledge of Julia Mosher-Collins, the principal of Hattie L. Mosher, and:

That neither the Assignor nor the Assignee had knowledge of the Assignment.

This Defendant, Julia C. Collins, further alleges that the consideration of \$9,000.00 paid by Julia Mosher-Collins to J. Gerard for the Assignment of Mortgage recorded in Book 7 of Assignments of Mortgage, on Page 159, was purchased with the separate funds of the said Julia Mosher-Collins, accumulated prior to her marriage to James Dean Collins, when she was Julia Winifred Mosher. [23]

That this Defendant, Julia C. Collins, had no

knowledge of the matters and things alleged in this supplemental answer at the time the Amended Answer in this cause was filed.

This Answer is merely supplementary to the Amended Answer heretofore filed by Julia C. Collins and does not purport to take the place of the Amended Answer nor to waive any of the matters contained in said Amended Answer.

PLATT, HENDERSON,  
WARNER & CRAM,  
11th Floor, Porter Building,  
Portland, Oregon.  
Attorneys for Julia C. Collins  
of Portland.

By E. E. SELDEN,  
Sixth Floor, Luhrs Tower,  
Phoenix, Arizona.  
Local Associate Attorney for  
Julia C. Collins.

(Duly Verified.)

Received copy of the above Supplement to  
Amended Answer March 17th, 1941.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,  
J. L. GUST,  
Attorneys for the Plaintiff.

[Endorsed]: Filed Mar. 17, 1941. [24]



In the United States District Court for the  
District of Arizona

April 1941 Term at Phoenix

Minute Entry of  
MONDAY, APRIL 7, 1941  
(Phoenix Division)

Honorable Dave W. Ling, United States District  
Judge, Presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk;  
Gwen J. Ballard, Deputy Clerk—Misc. Court is now  
duly opened according to law.

[Title of Cause.]

This being the time heretofore fixed for trial set-  
ting or other disposition, this case is now regularly  
called pursuant to notice to counsel.

J. L. Gust, Esquire, appears as counsel for the  
plaintiffs, E. E. Selden, Esquire, appears as counsel  
for the defendants, and on stipulation of respective  
counsel,

It is ordered that this case be passed on the cal-  
endar.

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In the United States District Court for the  
District of Arizona

April 1941 Term at Phoenix

Minute Entry of  
MONDAY, JUNE 16, 1941  
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Edward W. Scruggs, Clerk—Misc. Court is now duly opened according to law.

[Title of Cause.]

Motion of defendant Julia C. Collins for Leave to File Supplemental Answer, having been submitted and by the Court taken under advisement,

It is ordered that said motion be granted, and

It is further ordered that this case be and is set for trial Tuesday, September 16, 1941, at ten o'clock a. m. [25]

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In the United States District Court for the  
District of Arizona

April 1941 Term

at Phoenix

Minute Entry of

TUESDAY, SEPTEMBER 16, 1941

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk—Misc. Court is now duly opened according to law.

[Title of Cause.]

This case comes on regularly for trial this day before the Court sitting without a Jury.

John L. Gust, Esquire, appears as counsel for the plaintiffs. E. E. Selden, Esquire, appears as counsel for the defendants. Plaintiff Joe O'Connell, is present, and defendant Hattie L. Mosher, is present.

Louis L. Billar is present as Court reporter.

Both sides announce ready for trial.

On stipulation of respective counsel,

It is ordered that the following exhibits be admitted in evidence:

- Plaintiffs' exhibit 1, Complaint
- 2, Sheriff's Deed
- 3, Warranty Deed
- 4, Realty Mortgage
- 5, Tax receipts

- Defendants' exhibit A, Certified copies of deeds
- B, Picture
- C, Picture
- D, Certified copies of records in E-319 Phx.

Plaintiffs' Case:

The plaintiff, Joe O'Connell, is now duly sworn and examined in his own behalf.

Whereupon, the plaintiff rests. [26]

Defendants' Case:

The defendant, Hattie L. Mosher, is now duly sworn and examined in her own behalf.

Defendants' exhibit E, Certified copy of letter and transfer, is now admitted in evidence.

And the defendants rest.

Both sides rest, and

It is ordered that this case be submitted on briefs and by the Court taken under advisement, and that defendants be allowed thirty days in which to file brief and that plaintiffs be allowed 10 days thereafter in which to reply.

In the United States District Court for the  
District of Arizona

October 1941 Term

at Phoenix

Minute Entry of

THURSDAY, DECEMBER 18, 1941

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

Present: Wm. H. Loveless, Chief Deputy Clerk—  
Misc. Court is now duly opened according to law.

[Title of Cause.]

It is ordered that judgment be entered for the plaintiffs herein. [27]

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In the United States District Court for the  
District of Arizona

October 1941 Term

at Phoenix

Minute Entry of

WEDNESDAY, JANUARY 7, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

[Title of Cause.]

It is ordered that plaintiffs' Proposed Findings of Fact and Conclusions of Law be approved and adopted, and that the form of judgment, heretofore proposed by plaintiffs, be filed, entered and spread upon the minutes as the judgment in this case, as follows: [28]

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[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT QUIETING TITLE

Come now Joe O'Connell and Jessie B. O'Connell, husband and wife, plaintiffs in the above entitled action, and present and submit for the consideration of the court proposed Findings of Fact and Conclusions of Law, and proposed Decree, attached hereto.

Dated this 26th day of December, 1941.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,

201-11 Professional Building,  
Phoenix, Arizona

J. L. GUST,

Attorneys for Plaintiffs [29]



[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This cause having come on for trial upon plaintiffs' complaint, and the amended answer of the defendants thereto, upon the 16th day of September, 1941, and the court having heard the evidence without a jury, and the cause having been submitted for consideration of the court, upon due consideration the court finds the following facts:

FINDINGS OF FACT

I.

That on the 24th day of February, 1913, J. Gerard, a widow, was the owner and in possession of that certain parcel of real estate situated in the City of Phoenix, County of Maricopa, State of Arizona, described as:

Lot Two (2) in Block Three (3) of Churchill Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

II.

That on said 24th day of February, 1913, said J. Gerard, a widow, by warranty deed, recorded in the office of the County Recorder of Maricopa County, Arizona, on March 1, 1913, in Book 102 of Deeds, at page 90, conveyed the above described premises to

Greene and Griffin Real Estate and Investment Company, a corporation. [30]

III.

That thereafter on July 1, 1914, said Greene and Griffin Real Estate and Investment Company, a corporation by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on July 9, 1914, in Book 110 of Deeds, at page 179 conveyed said premises to Hattie L. Mosher, a widow.

IV.

That thereafter on March 1, 1929, said Hattie L. Mosher, a widow, executed a note for the principal sum of Six Thousand (\$6,000.00) Dollars to Elsie B. Ganz, a widow, and to secure the payment of said note said Hattie L. Mosher executed and delivered to said Elsie B. Ganz a realty mortgage on the above described premises, dated March 1, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481.

V.

That said Hattie L. Mosher neglected and refused to pay said note when the same became due and thereafter, on or about the 16th day of September, 1931, said Elsie B. Ganz filed a suit against the said Hattie L. Mosher to foreclose said mortgage; and that such proceedings were had in said foreclosure suit that a judgment was regularly entered in said

suit, foreclosing the said mortgage and directing the premises therein described to be sold in satisfaction of the indebtedness represented by said note; and in pursuance of said judgment, an execution and order of sale was issued and said premises were ordered sold and were purchased by said Elsie B. Ganz, plaintiff in said suit; and that neither the said Hattie L. Mosher nor anyone else redeemed from said sale and after the time for redemption had expired, to-wit, on or about the 27th day of October, 1932, a sheriff's deed was duly issued by the sheriff of Maricopa County, Arizona, conveying the above-described premises to the said Elsie B. [31] Ganz, said sheriff's deed being recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932, in Book 270 of Deeds at page 313.

#### VI.

That thereafter, on or about May 1, 1934, the said Elsie B. Ganz, a widow, by warranty deed recorded in the office of the County Recorder of Maricopa County, Arizona, on June 6, 1934, for valuable consideration, conveyed the above-described premises to the plaintiffs herein.

#### VII.

That plaintiffs immediately upon said conveyance last-mentioned being made, took possession of said premises under said conveyance, and ever since said date, have been in possession of said premises, claim-

ing the title thereto as against the whole world; and that such possession has been a visible and open and exclusive appropriation of said premises; and that plaintiffs since said date have paid the taxes upon the above-described premises.

### VIII.

1. That at the time Hattie L. Mosher purchased said premises from Greene and Griffin Real Estate and Investment Company, she assumed a mortgage thereon, executed by Greene and Griffin Real Estate and Investment Company payable to J. Gerard, said mortgage being recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at page 303.

2. On October 7, 1919, J. Gerard and Hattie L. Mosher entered into an agreement extending the time for the payment of said mortgage to February 24, 1928, the extension agreement being recorded on October 9, 1919.

3. On October 7th, 1919, J. Gerard assigned said mortgage to Julia Mosher Collins, daughter of Hattie L. Mosher.

4. At all times after July 20, 1915, until the death of Julia [32] Mosher Collins, Hattie L. Mosher held a general Power of Attorney from Julia Mosher Collins, dated July 20th, 1915, and recorded in the office of the County Recorder of Maricopa County, Arizona, on April 2nd, 1921.

5. During the lifetime of Julia Mosher Collins,

said mortgage was assigned by said Julia Mosher Collins, by Hattie L. Mosher, her attorney-in-fact, to James Dean Collins, husband of Julia Mosher Collins. This assignment was signed by Hattie L. Mosher as attorney-in-fact for Julia Mosher Collins, and acknowledged before a notary public as such attorney-in-fact, and delivered to the assignee by said attorney-in-fact before the death of Julia Mosher Collins, and was recorded in the office of the County Recorder of Maricopa County, Arizona, on April 18, 1921.

6. On May 4th, 1920, Julia Mosher Collins died, in the State of Oregon. One child, the defendant Julia C. Collins, and her husband, James Dean Collins survived her. Plaintiff had no knowledge of her death, and purchased said Lot 2, Block 3 of Churchill Addition, and paid full value therefor, without knowledge that Julia Mosher Collins had died before the date of the recording of said Power of Attorney.

7. On April 11, 1921, James Dean Collins executed a partial satisfaction of said mortgage. This partial satisfaction was recorded in the office of the County Recorder of Maricopa County, Arizona, on April 18, 1921.

8. On March 31, 1926, James Dean Collins, as owner of the mortgage, and Hattie L. Mosher, as mortgagee therein, executed an extension of agreement, extending the time for the payment thereof, and on the same date, James Dean Collins made an assignment of said mortgage to A. B. C. Davenport.



This extension agreement and assignment of mortgage were each recorded on April 13, 1926, in the office of the County Recorder of Maricopa County, Arizona. [33]

9. That the said mortgage was thereafter satisfied of record by the said A. B. C. Davenport by marginal notation on the record thereof, on April 26, 1929.

10. On May 8th, 1935, Julia C. Collins filed an action in this court for the foreclosure of said mortgage, against William A. Van Benchoten, as Guardian of the person and estate of Richard I. Van Benchoten, a minor, and Van Benchoten Estates, Incorporated, a corporation, Joe O'Connell and Jessie B. O'Connell, his wife. After the defendants other than Hattie L. Mosher, had filed motions to dismiss the complaint in said cause, they were dismissed therefrom at the instance of the plaintiff, and the case was proceeded with against Hattie L. Mosher, as sole defendant. A decree foreclosing said mortgage was entered pro confesso against Hattie L. Mosher, and thereafter, the purported special master's certificate of sale on foreclosure was made and a purported special master's deed conveying to Julia C. Collins the interest of Hattie L. Mosher in the premises hereinbefore described was obtained.

That said proceedings and purported special master's certificate of sale on foreclosure, and said purported special master's deed, were wholly without right, and cast a cloud upon plaintiff's title to said premises.

## CONCLUSIONS OF LAW

1. That the assignment executed by Hattie L. Mosher, as attorney-in-fact for Julia Mosher Collins, of the mortgage executed by Greene & Griffin Real Estate & Investment Company, to J. Gerard, and recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, at page 303, conveyed and transferred the title and the right to satisfy and discharge said mortgage to James Dean Collins, and that said mortgage was satisfied of record by said James Dean Collins.

2. That Julia Mosher Collins, the mother of the defendant, [34] Julia C. Collins, became estopped prior to her death from questioning the assignment and transfer of said mortgage under her Power of Attorney as against the plaintiffs, who relied on the records and purchased the mortgaged property in good faith, and for value, without knowledge of any claim of mortgage thereon by reason of having placed said power of attorney and said mortgage in the control of her mother, and that said estoppel extends to the plaintiff as she claims by inheritance from her mother.

3. That the defendants, Julia C. Collins and Hattie L. Mosher, nor either of them, have any right, title, claim or interest in or to or lien upon said Lot 2, in Block 3 of Churchill Addition, an

addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps, at page 69 thereof.

4. That the purported foreclosure proceedings had in this court by Julia C. Collins, by her guardian ad litem, Coit I. Hughes, against Hattie L. Mosher, et al, being Cause Number E-319, and the special master's certificate of sale and special master's deed have no validity, and are of no force or effect as against the title of the plaintiffs in and to the premises last above described.

5. That the plaintiffs, Joe O'Connell and Jessie B. O'Connell, are the owners in fee simple of the said Lot 2, Block 3 of Churchill Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at page 69 thereof, and are entitled to a decree settling their title to said premises, free and clear of all claim or interest in or to, or lien upon said premises claimed by or through the defendants, or either of them, and for their costs in this action.

Dated: Jan. 7, 1942.

DAVE W. LING,

Judge,

United States District Court,

for the District of Arizona.

In the District Court of the United States  
District of Arizona

Civil No. 114—Phoenix

JOE O'CONNELL and JESSIE B. O'CONNELL,  
husband and wife,

Plaintiffs,

vs.

JULIA C. COLLINS and HATTIE L. MOSHER,  
Defendants.

### JUDGMENT QUIETING TITLE

This cause came on regularly for trial on the 16th day of September, 1941, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause; evidence having been received and the trial concluded, the case was submitted to the court for its consideration by counsel for the respective parties; the court after due consideration having found the issues in favor of the plaintiffs and findings of fact and conclusions of law having been duly entered and filed herein,

It Is Ordered, Adjudged and Decreed that the plaintiffs Joe O'Connell and Jessie B. O'Connell, his wife, are the owners in fee simple of the following described premises, to wit:

Lot Two (2) in Block Three (3) of Churchill

Addition, an addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps at Page 69 thereof.

It Is Further Ordered, Adjudged and Decreed That the defendants Julia C. Collins and Hattie L. Mosher have no right, title, interest, claim or demand in or to or lien upon said premises whatsoever, and that said defendants, and each of them, are hereby barred and estopped from claiming any interest in or to said premises, or any part thereof, adverse to the plaintiffs.

It Is Further Ordered, Adjudged and Decreed that the plaintiffs recover their costs herein incurred and expended in the sum of [36] thirty four and 90/100 Dollars.

Received copy of within this 26 day of December, 1941.

E. E. SELDEN,  
By FRANK DYKES,  
Attorneys for .....

[Endorsed]: Filed Dec. 26, 1941.

[Endorsed:] Filed Jan. 7, 1942. [37]



[Title of District Court and Cause.]

MEMORANDUM OF COSTS  
AND DISBURSEMENTS.

## DISBURSEMENTS

Marshal's Fees .....	\$	
Clerk's Fees, filing Complaint in Superior Court of Maricopa County, State of Arizona	\$10.00	
Recorder's Fees Maricopa County, Arizona, recording Lis Pendens.....	1.00	
Docket Fee .....	10.00	
Examiner's Fees .....		
Witness Fees .....		
Sheriff's fees, Maricopa County, Summons .....	\$1.50	
mileage .....	.30—	1.80
Publication of Summons, Arizona Weekly Gazette .....	4.60	
Reporter's Fees, Louis L. Billar.....	7.50	
		<hr/>
Total, .....	\$34.90	

[Endorsed]: Clerk's Memo:

Objection (b)—Reporter's fees allowed; standing order dated Oct. 15, 1938 provides that reporter's fees may be taxed as costs for prevailing party. Objection (c)—Fees of Clerk U. S. Dist. Court, not claimed by pltfs. in this case. Atty's Docket Fee allowed under Sec. 572, Title 28, U.S.C. which is not a Clerk's fee.

Costs taxed at \$34.90 as claimed.

EDWARD W. SCRUGGS,  
Clerk

By WM. H. LOVELESS,  
Chief Deputy.

United States of America  
District of Arizona—ss.

Harold L. Divelbess being duly sworn, deposes and says: That he is one of the attorneys for the plaintiffs in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

HAROLD L. DIVELBESS

Subscribed and sworn to, before me, this 9th day of January, A. D. 1942.

[Seal]                    ETHOL FROST,

Notary Public, in and for the County of Maricopa,  
State of Arizona.

My commission expires Feb. 27, 1944. [38]

To Platt, Henderson Warner & Cram, Attorneys,  
of Portland, Oregon, and E. E. Selden, of  
Counsel, 612 Luhrs Tower, Phoenix

You will please take notice that on Monday the twelfth day of January, A. D. 1942, at the hour of 10:00 o'clock, a. m. . . . . will apply to the Clerk of said Court to have the within memorandum of

costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,

Professional Building,  
Phoenix, Arizona

By HAROLD L. DIVELBESS  
Attorney for plaintiffs.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged, this 9th day of January, A. D. 1942.

E. E. SELDEN  
Attorney for defendants.

[Endorsed]: Filed Jan. 9, 1942.

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[Title of District Court and Cause.]

OBJECTIONS TO COST BILL  
FILED IN THIS CAUSE

1—Come Now the Defendants and object to the cost bill as filed in this cause for the following reasons:

a—That this court has no jurisdiction to allow costs incurred in the Superior Court of the County of Maricopa, State of Arizona.

b—That there is no provision for any short hand reporter in a civil case in the District Court of the United States.

c—That moreover the costs were all advanced by Julia C. Collins when she removed this cause to the Federal Court from the Superior Court of the County of Maricopa, State of Arizona.

PLATT, HENDERSON,  
WARNER & CRAM,  
1115-Porter Building,  
Portland, Oregon,  
Attorneys for the Defendants.

E. E. SELDEN, Of Counsel,  
612-Luhrs Tower,  
Phoenix, Arizona.

E. E. SELDEN.

Received copy of above Objections to Cost Bill,  
January 15th 1942.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,

By J. L. GUST, Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 16, 1942. [39]

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

Come Now the Defendants and move the court to grant a new trial in the above entitled cause for the following reasons:

1—The court erred in rendering judgment in favor of plaintiffs for the reason that said judgment

is contrary to the evidence and is contrary to the law in this cause.

The undisputed evidence showed that the Assignment of Mortgage to James D. Collins was never delivered. All the circumstances corroborated the testimony of non delivery.

2—It is undisputed that Julia Mosher Collins died a year prior to the recordation of the assignment of mortgage to J. D. Collins.

The record shows that the plaintiffs had knowledge that the assignment was filed for record long after it was executed by H. L. Mosher, and that Julia Mosher Collins had no knowledge of its execution, which was an estoppel against any estoppel plaintiffs might try to claim against these defendants, or any of them. No Statement of Facts was asked for by either party in the cause.

3—The plaintiff, Joe O'Connell, admitted that he had never been in possession of the property, that O'Connell Brothers had been in possession at all times, going into possession under their lease.

4—There is also newly discovered on the part of Julia C. Collins to the effect that the power of attorney from Julia Mosher Collins to H. L. Mosher was never in the possession of H. L. Mosher after the execution thereof she having had merely an unexecuted carbon copy [40] until after the death of Julia Mosher Collins and her funeral and the return of H. L. Mosher to her home in Phoenix thereafter.



This new, and undiscovered evidence, should be made available to the defendant, Julia C. Collins, by the granting to her of a new trial.

That the undiscovered evidence by Julia C. Collins regarding this Power of Attorney is to the effect that it was to be made ready for use so that if some matter came up, after Julia C. Collins had been fully informed as to its nature, and approved of it, it could be used. That Julia Mosher Collins never had any knowledge of any intention to give an assignment of this mortgage to James D. Collins no more than had the assignee.

5—That no acceptance of this assignment of Mortgage was shown by the assignee and Julia C. Collins can prove that if any tender thereof had been made to him that he would have repudiated it.

6—That Mrs. Gans had full knowledge, through her attorney and agent, that her mortgage was a second mortgage, and it was so plead and proven.

PLATT, HENDERSON,  
WARNER & CRAM  
1115-Porter Building,  
Portland Oregon,  
Attorneys for Defendants.

E. E. SELDEN,  
Of Counsel,  
612-Luhrs Tower.

Received copy of above Motion for New Trial,  
January 16th, 1942.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,

Attorneys for Plaintiffs,

By J. L. GUST.

[Endorsed]: Filed Jan. 16, 1942. [41]

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In the United States District Court  
for the District of Arizona

October 1941 Term

At Phoenix

Minute Entry of

TUESDAY, JANUARY 27, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States District  
Judge, Presiding

Present: Wm. H. Loveless, Chief Deputy Clerk—  
Misc. Court is now duly opened according to  
Law.

Civ-114

[Title of Cause.]

Defendants' Motion for New Trial and Defend-  
ants' Objections to Cost Bill having been hereto-  
fore submitted and by the Court taken under ad-  
visement,

It Is Ordered that said Motion for New Trial be and it is denied and that said Objections to Cost Bill be overruled. [42]

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[Title of District Court and Cause.]

AFFIDAVIT FOR APPEAL IN  
FORMA PAUPERIS

State of Oregon  
County of Multnomah—ss.

Julia C. Collins, being first duly sworn, upon oath doth depose and say:

That she is a citizen of the United States and in conformity with 28 USCA, Sections 832 to 836, inclusive, makes this affidavit:

That she is one of the defendants in the above entitled cause and that January 7, 1942, a judgment was rendered against her and was filed and entered; that January 16, 1942, a Motion for a new trial was filed; that January 27, 1942, an Order was entered denying defendants' Motion for a new trial; that the denial of the Motion for a new trial was within the three months previous to the filing of this affidavit;

The nature of this cause of action is that the mother of this affiant died the owner of considerable property; In the infancy of this affiant, and while her mother lay upon her death bed, the grandmother

of this affiant, purporting to act on a power of attorney, transferred a valuable mortgage owned by the mother of this affiant placing it upon record over a year after the death of the mother, which was the inheritance of this affiant; Many other points are claimed by both plaintiffs and defendants;

The grounds of the appeal are that the judgment and findings of fact in the opinion of this affiant are not in accord with the justice of this cause; [43]

That this affiant has no one from whom she can get financial assistance in the furtherance of this appeal; that she is sustaining herself as a designer of jewelry and ornaments but that the present war has made the metals with which she works uncertain of attainment; that her father affords her a home in which to live but that his health has recently become undertain and his occupation as a newspaper writer does not now afford the income from free lance work that existed before the war; that the only other available relative she has is her grandmother who has lost her entire fortune between the depression, mortgages and delinquent taxes; that the property at issue to which she feels she has first claim, is quite valuable, but is, in no way available for the expenses of an appeal, or as a basis for a cost bond on appeal; that she has no property out of which she could raise the costs of an appeal of this cause;

That her cause of action is just, that she is acting

in good faith, and that the equities of the case are that she cannot be deprived of the inheritance of the land her mother owned at the time of her death.

JULIA C. COLLINS,  
Affiant.

Subscribed and sworn to before me, Wilber Henderson, Notary Public for Oregon, in and for the County of Multnomah, State of Oregon, April 20th, 1942.

[Seal]                    WILBER HENDERSON,  
Notary Public for Oregon.

My commission expires: June 9, 1945.

[Endorsed]: Filed Apr. 24, 1942. [44]



[Title of District Court and Cause.]

AFFIDAVIT FOR APPEAL IN  
FORMA PAUPERIS

State of Arizona

County of Maricopa—ss.

Hattie L. Mosher, being first duly sworn, upon her oath doth depose and say:

That she is a citizen of the United States and in conformity with 28 USCA, Sections 832 to 836, inclusive, makes this affidavit.

That she is one of the defendants in the above entitled cause and that January 7, 1942, a judgment was rendered against her and was filed and entered. That January 16, 1942, a Motion for a new trial was filed. That January 27, 1942, an Order was entered denying Defendants' Motion for a New Trial. That the denial of the Motion for New Trial was within the three months previous to the filing of this affidavit.

The nature of this cause is such that the daughter of this affiant died the owner of considerable property and with only one child, an infant when her mother died. That this grandmother had been shown a power of attorney executed by her daughter who retained it in her own possession. That this daughter, Julia Winifred Collins had bought, with her own individual money, a \$9,000.00 mortgage against the land owned by her mother, who is the grandmother of the co-defendant, Julia C. Collins. This grandmother used an existing, but undelivered, power of attorney given by the holder of the mort-

gage on her land and assigned this mortgage to her son-in-law without his knowledge. This grandmother kept the assignment in her own safety box and a year after the death of the mortgage holder put it on record. The grounds of this appeal are that the judgment and findings of fact in the opinion of this affiant are not in accord with the justice of this cause. That this affiant is in debt and has lost her property through mortgages, judgment liens, delinquent tax sales and has no one to help her out in the expenses of an appeal.

Wherefore, she prays this Honorable Court to grant her the order to prosecute her appeal to the Ninth Circuit Court of Appeals.

HATTIE L. MOSHER,  
Affiant.

Subscribed and sworn to before me by Hattie L. Mosher, April 22nd, 1942.

[Seal] JOHN D. RHYNE,  
Notary Public.

My Commission Expires June 26, 1943.

[Endorsed]: Filed Apr. 24, 1942. [45]

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[Title of District Court and Cause.]

PETITION, PRAYER AND ORDER

Come Now the defendants, and appellants, and  
Petition for, and Pray, that:

This Honorable Court will enter an Order allow-

ing an Appeal in Forma Pauperis in the above entitled action.

PLATT, HENDERSON,  
WARNER and CRAM,  
By WILBER HENDERSON,  
1115-Porter Building,  
Portland, Oregon; and  
MOAL E. GRAY,  
Of Counsel,  
301-Phoenix National Bank  
Building,  
Phoenix, Arizona.

ORDER

The Affidavits of the Defendants, and appellants, and the above Petition and Prayer by their Attorneys of Record having been read by this Court and duly considered it is now Ordered that the said defendants and appellants are hereby given the right, and permission, of this Court, to prosecute their Appeal in Forma Pauperis.

.....  
Judge.

[Endorsed]: Filed Apr. 24, 1942. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Joe O'Connell and Jessie B. O'Connell; and to:  
Their representing attorney, John Gust:  
You and each of you will please take Notice that:

Julia C. Collins, and Hattie L. Mosher, Defendants in the above styled cause, Appeal to the United States Circuit Court of Appeals, Ninth Circuit, sitting at San Francisco, from that certain judgment January 7, 1942, in favor of the above named plaintiffs, and appeal from the Order Denying a New Trial entered January 27, 1942, and from the whole thereof.

PLATT, HENDERSON,  
WARNER & CRAM

By WILBER HENDERSON

1115-Porter Building Port-  
land, Oregon, and

W. H. CHESTER,

Of Counsel,

Attorneys for Defendants.

Fourth Floor—Phoenix

National Bank Building,

Phoenix, Arizona.

[Endorsed]: Filed Apr. 25, 1942. [47]

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[Title of District Court and Cause.]

### BOND ON APPEAL

Know All Men by These Presents:

That we, Julia C. Collins and Hattie L. Mosher, as principals, and the undersigned sureties, are held and firmly bound to the above set forth plaintiffs in the penal sum of \$250.00 well and truly to be paid.

For this we bind ourselves, our estates and personal representatives. The condition of this undertaking is that the plaintiffs have secured a judgment, and an Order Denying a New Trial, from us and from this we are appealing to the Ninth Circuit Court of Appeals.

Now, therefore, if the said defendants, and appellants, shall well and truly pay all sums adjudged against them in this appeal, by way of costs, then this obligation to be null and void, otherwise to be in full force and effect.

JULIA C. COLLINS,  
 By PLATT, HENDERSON,  
 WARNER & CRAM,  
 Of Portland, Oregon,  
 By WILBER HENDERSON, and  
 NOAL R. GRAY,  
 Of Counsel,  
 301—Phoenix National Bank  
 Building.  
 HATTIE L. MOSHER,  
 Principals.

ROBT J. EVANS  
 W. G. EVANS  
 COIT I. HUGHES  
 HATTRUDE B. HUGHES,  
 Sureties.

State of Arizona  
 County of Maricopa—ss.

The undersigned Sureties, being first duly sworn,



each for himself, and not one for the other, state that they are worth \$250.00 over and above their just debts and liabilities and property exempt from execution and liens, in Maricopa County, Arizona.

ROBT. J. EVANS

W. G. EVANS

COIT I. HUGHES

HATTRUDE B. HUGHES,

Sureties.

Subscribed and sworn to before me, Virgil King, a Notary Public, in, and for, the County of Maricopa, Arizona, by the above signed Sureties, April 24th, 1942, at 4:45 P.M.

My Commission Expires Aug. 25th, 1943.

[Seal]

VIRGIL KING

Notary Public.

[Endorsed]: Filed Apr. 25, 1942. [48]

In the United States District Court for the District  
of Arizona

April 1942 Term

At Phoenix

Minute Entry of

MONDAY, APRIL 27, 1942

(Phoenix Division)

Honorable Dave W. Ling, United States Dis-  
trict Judge, Presiding.

Civ-114

JOE O'CONNELL, et ux,

Plaintiffs,

vs.

HATTIE L. MOSHER, et al.,

Defendants.

[Title of Cause.]

The Petition of Defendants for an Order Allow-  
ing an Appeal in Forma Pauperis and the affi-  
davits of the defendants in support thereof having  
been duly considered by the Court, the Court is  
of the opinion that such appeal is not taken in  
good faith, and

It Is Ordered that said Petition of Defendants  
for an order allowing appeal in Forma Pauperis  
be denied. [49]

[Title of District Court and Cause.]

CERTIFICATE OF ATTORNEY

Comes Now Noal R. Gray, who, as the local representative of Platt, Henderson, Warner & Cram, by Wilber Henderson, the answering attorneys in the above entitled action, and certifies that he presented the two Affidavits for Appeal in Forma Pauperis of Julia C. Collins and Hattie L. Mosher and the Order therefor, in his above set forth capacity, to the Honorable Dave W. Ling, the presiding judge in this District of Phoenix, on the Twenty Third day of April, 1942, and that upon such presentation the said presiding judge refused to affix his signature to the Order therein contained which would have permitted an appeal of this cause to the Circuit Court of Appeals, Ninth Circuit, in Forma Pauperis.

That immediately thereafter, on the Twenty Fourth day of April, 1942, he caused the two affidavits and the Order, unsigned, *supra*, to be filed by the Clerk of the Court in the Record of the above set forth action.

NOAL R. GRAY,  
Attorney.

[Endorsed]: Filed May 1, 1942. [50]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY ON  
THIS APPEAL

Come Now The Appellants On Appeal in the above styled action in which they are the defendants and give for their Statement of Points to be relied upon on appeal, as follows:

1—That the Revised Statutes of 1913, Civil Code, governs all tangible, and recorded, instruments appertinent hereto, and connected herewith.

2—That plaintiffs' Exhibit 1, The Ganz Foreclosure Suit, cannot be considered as evidence against the ownership of Julia C. Collins to Lot 2, Block 3, Churchill, as she was not a party to that suit, the culmination of which resulted in the execution of a Sheriff's deed to Elsie B. Ganz, of the said lot.

3—That the Sheriff's Deed to Elsie B. Ganz cannot be considered as evidence against the ownership of Julia C. Collins as she was not a party to the suit which resulted in this plaintiffs' Exhibit 2.

4—That plaintiffs' Exhibit 3, the deed from Elsie B. Ganz to Joe O'Connell cannot be considered as evidence against the ownership of Julia C. Collins as the only title held by the grantor was derived from a lawsuit to which Julia C. Collins was not a party.

5—That the Record and Testimony show that

if Mrs. Ganz ever had any mortgage as plead in plaintiffs' complaint, there being no evidence in the exhibits filed that any such mortgage ever existed, that it was only a second mortgage, and known to be such to Mrs. Ganz. [51]

6—That the lease to O'Connell Brothers, Defendants' Exhibit A, paper I, shows the paying taxes was assumed by them when they went into possession.

7—That the Warranty Deed from Ganz to O'Connell especially excepts paying of taxes among other exceptions. Exhibit 3.

8—That plaintiffs' Exhibit 5, certain tax receipts, show that the taxes were only paid 4½ years since the Ganz deed; that the land was variously assessed; that taxes were sometimes paid by Joe O'Connell and sometimes paid by O'Connell Brothers. That sometimes they went delinquent, before payment.

9—That defendants Exhibit E shows the conspiracy between Joe O'Connell and the Assessor to complete the 5 years of tax paying, and shows that it is a title company who is trying to quiet the title and not the purposed plaintiffs.

10—That the instruments in plaintiffs' Exhibit 4, which are not duplicated in defendants' Exhibit 4, excepting papers 2 and 3, do not comply with the law and Arizona Statutes and show on their faces that they are ineffective.

11—That the 12 instruments in Defendants' Exhibit show the fee simple ownership of Julia C.



Collins. This is Exhibit A. They show the approval of this court in papers J, K, and L.

12—Exhibits B and C, of defendants, 2 photographs, show that the possession and occupancy was by O'Connell Brothers, a corporation, as did the testimony of Joe O'Connell, himself.

13—That the certified copies of documents from Equity 319, filed March 19, 1941, by the defendants, being their Exhibit D, show the foreclosure proceedings of the First mortgage of Julia C. Collins and the correctness of all essentials thereto, properly signed by this court, and properly approved by this court, thus completing the chain of her title as begun in defendants' Exhibit A.

14—The Fourteenth point relied on is that all of the pleadings [52] in this case; all of the filed instruments pertaining thereto; all of the Minute Entries, even when an order of the court therein was against these defendants; and the testimony at the trial; one, and all, are conclusive that the purported plaintiffs should have taken nothing, and that these defendants should have prevailed and that the fee simple title shown by the filed exhibits from Equity-319 as being in Julia C. Collins should have remained undisturbed.

15—That the objections to the Cost Bill filed by the plaintiffs should be sustained and that it is against equity, law and justice to the public, at large, that the example of such a cost judgment should be permitted to stand, as it would stand, even after a reversal of a judgment allowing it.

Likewise Statements of Facts cannot be put in a judgment when not asked for by a party thereto.

16—That a Power of Attorney does not give its holder a right to deal with his own property.

Hence the Assignment of the Mortgage from Julia Mosher Collins to James Dean Collins was void, or voidable, and plaintiffs' predecessors in interest, as well as plaintiffs, were charged with notice of this fact.

PLATT, HENDERSON,  
WARNER & CRAM,  
By WILBER HENDERSON  
Attorneys,

1115—Porter Building,  
Portland, Oregon, and  
W. H. CHESTER  
Of Counsel, Fourth Floor,  
Phoenix National Bank  
Building, Phoenix, Arizona,  
Attorneys for Defendants  
and Appellants.

Received Copy of the above Statement of Points  
for Appeal.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,  
Attorneys for Plaintiffs and  
Appellees, May 14th, 1942.  
By J. L. GUST

[Endorsed]: Filed May 14, 1942. [53]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME FOR  
FILING RECORD ON APPEAL AND—  
ORDER

Come Now the defendants and appellants in the above styled cause and respectfully move the court for an extension of time of thirty days in which to file the certified record on appeal in the Court of Appeals, up to, and including July 6, 1942.

PLATT, HENDERSON,

WARNER & CRAM,

By WILBER HENDERSON,

1115 Porter Building, Port-  
land, Oregon.

W. A. CHESTER,

Of Counsel. 412 Phoenix Na-  
tional Bank Building.

Phoenix.

ORDER

It is hereby ordered that the time for filing the certified copy of the Record on Appeal in the Circuit Court of Appeals, Ninth Circuit, is extended to July 6, 1942, inclusive.

Dated May 27, 1942.

DAVE W. LING

Judge

[Endorsed]: Filed May 27, 1942. [54]

[Title of District Court and Cause.]

MOTION FOR ORIGINAL EXHIBITS TO BE  
USED ON APPEAL

Come Now the defendants and appellants in the above styled cause and respectfully move the court to send the Original Exhibits filed in this cause to the Circuit Court of Appeals, Ninth Circuit, for the considerations and inspections of the Circuit Judges who will preside at the Hearing of the Appeal of this cause.

PLATT, HENDERSON,  
WARNER & CRAM,  
By WILBER HENDERSON,  
1115 Porter Building, Port-  
land, Oregon.  
W. H. CHESTER,  
Of Counsel. 412 Phoenix Na-  
tional Bank Building.  
Phoenix, Arizona.

ORDER

It is *hereby that* the Original Exhibits, and all thereof, which includes the Original Transcript, Ordered to be sent to the Circuit Court of Appeals, Ninth Circuit, the presiding judge at the trial of this action having duly considered the transcribed testimony in rendering judgment in favor of the plaintiffs herein, and the attorneys for both plaintiffs and defendants each having for their

uses in preparation of the appeal a carbon copy of said Reporter's Transcript.

Dated May 27, 1942.

DAVE W. LING

Judge

[Endorsed]: Filed May 27, 1942. [55]

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[Title of District Court and Cause.]

ADOPTION OF STATEMENT OF POINTS IN  
NOTICE OF APPEAL FOR APPELLATE  
COURT

NOTICE

To:

The United States *States* Circuit Court of Appeals, Ninth Circuit; and

To:

Joe O'Connell and Jessie B. O'Connell; and  
J. L. Gust their Attorney; and the District  
Court of the State of Arizona;

You Are Hereby Given Notice that the defendants, and appellants, have adopted for their Points to be Relied Upon for their appeal the Statement of Points filed by them May 14, 1942, in this Court.



PLATT, HENDERSON,  
WARNER & CRAM,  
By WILBER HENDERSON.

Attorneys for Defendants.  
1115—Porter Building,  
Portland, Oregon.

W. H. CHESTER

Of Counsel, Fourth Floor,  
Phoenix National Bank  
Building. Phoenix, Arizona.

Received Copy of Above Notice June 29th, 1942.

J. L. GUST

Attorney for Plaintiffs and  
Appellees.

[Endorsed]: Filed Jun. 29, 1942. [56]

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[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD  
ON APPEAL

The Clerk of this District Court is requested to make a certified Transcript of Record to be filed in the United States Circuit Court of Appeals, Ninth Circuit, containing, as follows:

- 1—The Complaint—Filed in the Superior Court of Maricopa County, State of Arizona, January 30, 1940.
- 2—Order for Removal to United States District Court, signed by G. A. Rodgers, Presiding Judge. Filed in Superior Court April 10, 1940.

- 3—Notice of Removal—Filed in Federal Court May 28, 1940.
- 4—Defendants' Amended Answer—Filed March 7, 1941.
- 5—Motion of Julia C. Collins for Supplemental Answer, Notice thereof, and Order therefor—Filed March 17, 1941, and Supplement to Amended Answer filed therewith.
- 6—Minute Entry of April 7, 1941.
- 7—Minute Entry of June 16, 1941.
- 8—Minute Entry of September 16, 1941. The Trial.
- 9—Minute Entry of December 18, 1941. Judgment for Plaintiffs.
- 10—Judgment for plaintiffs—Filed January 7, 1942.
- 11—Plaintiffs' Memorandum of Costs and Disbursements—Filed January 9, 1942.
- 12—Entry of Tax Costs for Plaintiffs at \$34.90.
- 13—Defendants' Motion for New Trial—Filed January 16, 1942.
- 14—Defendants' Objections to Cost Bill—Filed January 16, 1942.
- 15—Minute Entry of January 27, 1942. Denying Defendants' Motion for New Trial and overruling Defendants' Objections to Cost Bill heretofore submitted by Plaintiffs.
- 16—Affidavit of Julia C. Collins for Appeal in Forma Pauperis— [57] Filed April 24, 1942.
- 17—Affidavit of Defendant Hattie L. Mosher for Appeal in Forma Pauperis—Filed April 24, 1942.

- 18—Defendants' Petition for Order Allowing Appeal in Forma Pauperis—Filed April 24, 1942.
- 19—Defendants' Notice of Appeal—Filed April 25, 1942.
- 20—Defendants' Bond on Appeal—Filed April 25, 1942.
- 21—Minute Entry of April 27, 1942, denying defendants' Petition for Order Allowing Appeal in Forma Pauperis.
- 22—Certificate of Attorney—Filed May 1, 1942.
- 23—Statement of Points Upon Which Appellants Intend To Rely on This Appeal—Filed May — 1942.
- 24—Designation of Portions of Record on Appeal —Filed May — 1942. (This Paper)

Also any subsequent papers found necessary to be filed by the Defendants before the Certified Papers are sent up for Appeal by the Clerk of this Court.

PLATT, HENDERSON,  
WARNER & CRAM,  
of Portland, Oregon,  
By WILBER HENDERSON,  
Attorneys, 115 Porter Building,  
Portland, Oregon, and  
W. H. CHESTER,  
Of Counsel, Attorneys for  
Defendants and Appellants,  
Fourth Floor, Phoenix National  
Bank Building,  
Phoenix, Arizona.

Received Copy of the above Designation of Portions of Record.

GUST, ROSENFELD, DIVEL-  
BESS, ROBINETTE &  
COOLIDGE,

Attorneys for Plaintiffs and  
Appellees, May 14th, 1942.

By J. L. GUST

[Endorsed]: Filed May 14, 1942. [58]

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[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America  
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Joe O'Connell and Jessie B. O'Connell, husband and wife, Plaintiffs, versus Julia C. Collins and Hattie L. Mosher, Defendants, numbered Civil-114 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 58, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all papers filed therein, together with the en-

dorsements of filing thereon, called for and designated in the designation filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that all original exhibits in said case, to-wit: Plaintiffs' Exhibits 1 to 5, inclusive, and Defendants' Exhibits A to E, inclusive, together with the original reporter's transcript, are transmitted herewith pursuant to Order of May 27, 1942.

I further certify that the Clerks fee for preparing and certifying to this said transcript of record amounts to the sum of \$8.65 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of the said Court this 2nd day of July, 1942.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS

Chief Deputy Clerk [59]

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[Title of District Court and Cause.]

### REPORTER'S TRANSCRIPT

The above entitled and numbered cause came on duly and regularly for hearing in the above entitled court before Honorable Dave W. Ling, Judge,



presiding without a jury, commencing at the hour of 10 o'clock A. M. on the 16th day of September, 1941.

The Plaintiffs were represented by John L. Gust of Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge.

The Defendants were represented by E. E. Selden.

Thereupon the following proceedings were had.

The Clerk: Civil 114, Phoenix; Joe O'Connell and Jessie B. O'Connell vs Julia C. Collins and Hattie L. Mosher.

Mr. Gust: The plaintiffs are ready.

Mr. Selden: The defendants are ready.

Mr. Gust: May it please the court, we had some little remarks the last time we tried this case on the appearances, so I would like to ask Mr. Selden who he appears for. Who do you appear for on this, Mr. Selden?

Mrs. Mosher: I think the amended answer, a copy of which was served on you, Mr. Gust, will show all the statistics in connection with it.

The Court: Who do you appear for, Mr. Selden?

Mrs. Mosher: Huh?

The Court: I am speaking to——

Mr. Selden (Interposing): I am appearing for Julia C. Collins and also (pauses)—well, for the defendant, Julia C. Collins.

The Court: And Hattie L. Mosher?

Mrs. Mosher: You are appearing for whatever you are cited for.

Mr. Selden: I am appearing for Julia C. Collins.

The Court: And not for Mrs. Mosher?

Mr. Selden: Yes, and also Hattie L. Mosher, both defendants.

Mr. Gust: I will state that there is only one complaint filed in here, but there are several [2\*] answers filed. As I understand, in the pleadings before the court was a joint answer filed on March 7th, 1941, and then in addition to that a supplemental answer by Julia C. Collins filed on March 17th, 1941. Is that your understanding of it, Mr. Selden?

Mr. Selden: That is correct. There is a supplemental answer. There is an amended answer which is filed March 4th, 1941 and then there is a supplemental answer filed March 17th, 1941.

Mr. Gust: The supplemental answer, I think, is for Julia C. Collins alone.

Mr. Selden: Yes, that is correct.

Mr. Gust: There were at the former trial, a number of exhibits introduced in evidence, I think about 5, on behalf of the complainant, and I think only one on behalf of the defendant Mosher. Are there 5 exhibits in the former trial, Mr. Clerk for the plaintiff?

The Clerk: 5.

Mr. Gust: 5 for the plaintiff?

The Clerk: 5 for the plaintiff and 3 for the defendants.

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\*Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Selden: One of these 3 here—yes, I would like to examine all of the exhibits [3] momentarily here to see if they are sufficient.

Mr. Gust: We may stipulate on the exhibits.

The Clerk: The defendant was allowed to file certified copies in the other case.

Mr. Selden: It may be stipulated that as far as—I want all of these exhibits in this present case, as well as—that is, in the present trial, that it could be stipulated in and between counsel that all of these exhibits can be now considered as being tried in this particular—

The Court: Well, they can be introduced in this case.

Mr. Gust: May it be stipulated that they all be received in this case? Now, with consent of counsel for both sides, it includes Exhibits 1, 2, 3, 4 and 5 for the plaintiffs, and 5 being two groups of tax receipts, one, State and County and one, City, and then for the defendants it includes Exhibits A, B and C and also certain certified copies of proceedings in this court filed on March 19th, which was after the trial. Now, as far as the plaintiff is concerned, we stipulate that all of them may be received in evidence now.

Mr. Selden: I would like to have them received in evidence, because I want everything in evidence in this case that was in evidence in [4] the previous case.

The Court: Well, it is all the same case.

Mr. Selden: Well, say the other trial, I might put it that way.

Mr. Gust: Then they are received?

The Court: Yes.

(Thereupon the documents were received as Plaintiffs' Exhibits 1, 2, 3, 4 and 5 in evidence.)

(Thereupon the documents were received as Defendants' Exhibits A, B, C and D in evidence.)

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Mr. Gust: I will call Mr. O'Connell.

JOE O'CONNELL

was called as a witness in his own behalf, and being first duly sworn testified as follows:

Direct Examination

Mr. Gust:

Q. State your name?

A. Joe O'Connell.

Q. Where do you reside, Mr. O'Connell?

A. 3042 East Manor Drive, Phoenix.

Q. You have resided in Phoenix for a number of years?      A. All my life.

Q. You have a place of business here on [5] Central Avenue, which is conducted under the name of O'Connell Brothers?      A. I do.

Q. And the property that is, about which you are suing to quiet this title on in this suit is the property where the business of O'Connell Brothers is situated?      A. Yes.

(Testimony of Joe O'Connell.)

Q. That property is improved? A. Yes.

Q. What improvements are thereon?

A. Well, it has a brick building on the whole lot.

Q. And it is situate in the City of Phoenix?

A. Yes.

Q. A city lot? A. Yes.

Q. Now, how long have O'Connell Brothers occupied that property?

A. I don't know exactly—some 10 or 12 years.

Q. You first went in possession of that property under a lease, did you? A. I did.

Q. From whom?

A. Mrs. Mosher.

Q. And you later purchased it? [6]

A. I did.

Q. Tell us from whom and when you purchased it? A. From Mrs. Ganz.

Q. Mrs. Arlene Ganz?

A. No, not Arlene. I think it is Mrs. Emma Ganz.

Mr. Selden: Elsie B?

A. Elsie B, yes sir.

Mr. Gust: State what was the circumstances under which you purchased the property?

A. Well, I don't know what you mean, except that I gave her so much money for it.

Q. Well, you have been originally there under a lease from Mrs. Mosher. Why didn't you continue it?



(Testimony of Joe O'Connell.)

A. Because she took title of the property through Sheriff's sale. She owned the property so I bought it from her.

Q. You mean, Mrs. Ganz did?

A. Mrs. Ganz did, yes.

Q. So after she got title through the Sheriff's sale, why, you purchased it from her?

A. I did.

Q. After that did you pay any rent to Mrs. Mosher? [7] A. I did not.

Q. You received a deed from Mrs. Ganz at the time you made the purchase? A. I did.

Q. I hand you Plaintiff's Exhibit No. 3 in this case and ask you if that is the deed that you received from Mrs. Ganz (handing document to witness)? A. Yes.

Q. After that date you paid no further rent for the property? A. That is right.

Q. You have been in possession ever since?

A. That is right.

Q. Claiming it as your own under this deed?

A. That is right.

Q. And nobody has in any way interrupted your possession there? A. No.

The Court: What is the number of that exhibit?

Mr. Gust: 3, and the date of this deed is the 1st day of May, 1934.

Q. What did you pay for the property, Mr. O'Connell?

A. I don't remember offhand, but some 17 or [8] 18 thousand dollars.

(Testimony of Joe O'Connell.)

Q. In cash?

A. Check, yes, cash.

Q. And at that time did you have any knowledge of the defendant Julia C. Collins having any claim or making any claim to this property?

A. I did not.

Q. You acquired evidence of title in the usual way when you purchased it?      A. I did.

Q. And there was nothing called to your attention of *their* being any claim whatsoever on behalf of Julia C. Collins?

A. There was not.

Q. And you didn't know of any claims whatsoever except such as may have been mentioned in the deed?      A. No, I did not.

Mr. Gust: There is one clause in it, your Honor, that excepting certain things like street paving lien, the rights of O'Connell Brothers under their lease and judgment against Hattie L. Mosher in favor of the Water Users some small amount.

Q. Now, handing you Plaintiff's Exhibit No. 5, consisting of two sets of tax receipts, I will ask you if you know anything about those tax [9] receipts?

A. I know that I paid them.

Q. You paid the taxes represented by those receipts and received the receipts?

A. That is right.

Q. And will you look there and see when they begin?      A. This begins with 1931.

(Testimony of Joe O'Connell.)

Q. That is the State and County, and this here (indicating papers), I think, is the City, isn't it?

A. That starts in 1931, that is right.

Q. So you have paid all of the taxes, both State and County and City on this property since 1931?

A. That is right.

Q. During the first part or a portion of that time, what was your reason for paying it?

A. You mean in 1931?

Q. Yes.

A. Why, I think under the terms of the lease, I was to pay the taxes.

Q. You were to pay the taxes under the terms of the lease with Mrs. Mosher?      A. Yes.

Q. And you did that as long as the lease [10] continued?      A. Yes.

Q. And after you got a lease from Mrs. Ganz, what was your reason for paying it?

A. I always paid my taxes.

Q. Paid them as the owner after that date?

A. That is right.

Q. You have paid them every year since that time?      A. Yes.

Q. You have never seen Julia C. Collins?

A. I have not.

Q. And Mrs. Mosher, of course, has never made any claim to this property since you got the Ganz deed?      A. No.

Mr. Gust: That is all, you may cross examine.

(Testimony of Joe O'Connell.)

Cross Examination

Mr. Selden:

Q. Mr. O'Connell, is the O'Connell Brothers a corporation?      A. It is.

Q. And it is duly licensed to do business in the State of Arizona?      A. Yes. [11]

Q. And it has been so duly licensed ever since 1934?      A. Before that.

Q. And since before that, and the lease which you speak about from Mrs. Mosher was made with the O'Connell Brothers, a corporation, was it not?

A. I don't know, I'd have to look at the lease.

Q. You don't know whether it was or not?

A. I don't know whether it is Joe O'Connell or O'Connell Brothers.

Q. And, as a matter of fact, the O'Connell Brothers, a corporation, were in possession of this property when you got the deed in 1934, were they not?      A. They were.

Q. And they are still in possession, is that not true?      A. Yes.

Q. And they were in possession—I mean, you don't know whether they were in possession under a lease from Mrs. Mosher in 1934 or not, is that your testimony?      A. I do not.

Q. Now, in this exhibit, I believe it was the deed from Mrs. Ganz to you, Exhibit—

The Court (Interposing): It is 3, I think. [12]

Mr. Selden: Is it Exhibit 3? Well, Exhibit 3, yes—Plaintiffs' Exhibit 3. There is an exception

(Testimony of Joe O'Connell.)

here to "The rights of O'Connell Brothers, Incorporated, a corporation of Arizona, under the terms of that certain lease dated September 17th, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, Incorporated, a corporation of Arizona—" Did you know that that exception was in this warranty deed at the time it was given to you, Mr. O'Connell?

A. I probably did.

Q. Then you did know at that time that the O'Connell Brothers, a corporation, had the lease from Mrs. Mosher? A. Yes.

Q. Then it is true, and this refreshes your memory, does it not, that the lease was from Mrs. Mosher to the O'Connell Brothers, a corporation?

A. That is right.

Q. So that the O'Connell Brothers, a corporation, has been in the possession—in the actual possession of that particular property since before 1934? A. That is right.

Q. And that possession has been unbroken, is that correct; their possession has been unbroken?

[13]

A. That is correct.

Q. And you, yourself, have never been in possession of that property as an individual?

A. Well, I don't know how you differentiate between O'Connell Brothers and Joe O'Connell.

Q. Well, it is a corporation, you say, existing?

A. I own the corporation.



(Testimony of Joe O'Connell.)

Q. Well, you don't own all of the stock in the corporation, do you, Mr. O'Connell?

A. Practically.

Q. But there are other stockholders?

A. Yes.

Q. And who are they, Mr. O'Connell?

A. There is Tom and Mary O'Connell.

Q. Who? A. Tom and Mary O'Connell.

Q. Tom and Harry O'Connell?

A. Mary, M-a-r-y.

Q. Tom and Mary O'Connell? A. Yes.

Q. And do you know how many shares of stock they own?

A. Yes, but I own control so it doesn't make any difference.

Q. You have control? [14]

A. That is right.

Q. But you have never considered the corporation as the same as yourself, have you, Mr. O'Connell? A. No.

Q. And you keep separate books, do you not?

A. Yes.

Q. And you make separate income tax returns?

A. Yes.

Q. And you keep your business separate from that of the corporation, do you not?

A. Yes.

Q. And you always have done that?

A. Not always. I have for some years, but not always.

(Testimony of Joe O'Connell.)

Q. You have for some years kept your business separate from the corporation? A. Oh, yes.

Q. And about how many years have you kept it separate from the corporation?

A. I can't answer that.

Q. Were you keeping it separate in 1934?

A. Yes.

Q. And you kept it separate ever since that time? A. Yes.

Mr. Selden: That is all. [15]

Redirect Examination

Mr. Gust:

Q. Mr. O'Connell, when you purchased this property, was the title made in Joe O'Connell; did you pay for it in your individual funds, or did O'Connell Brothers pay for it?

A. Individual funds.

Q. Do you know whether or not O'Connell Brothers have paid any rent to Mrs. Mosher since you got the deed from Mrs. Ganz?

A. I know they have not.

Q. They have paid rent to you?

A. They have.

Q. They have paid rent to you every year since 1934? A. Every month.

Mr. Gust: Every month. That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: We rest. [16]

## DEFENDANTS' CASE

## HATTIE L. MOSHER

was called as a witness on behalf of defendants, and being first duly sworn testified as follows:

## Direct Examination

Mr. Selden:

Q. What is your name?

A. Mrs. H. L. Mosher. I live at 313 North Center Street.

Q. Did you have a daughter named Julia Winifred Mosher? A. Yes.

Q. She afterwards married Mr. J. D. Collins?

A. Yes.

Q. Is she living? A. No.

Q. When did she die?

A. May 4th, 1920.

Q. And did she die intestate? A. Yes.

Q. How many heirs did she leave?

A. She left one child, a daughter, Julia C. Collins, and a husband, James D. Collins.

Q. Now, did she give you any power of attorney [17] during her lifetime; did she give you power of attorney to handle her affairs during her lifetime?

A. Well, she made out a power of attorney and acknowledged it in Portland.

Q. Did she deliver that power of attorney to you?

(Testimony of Hattie L. Mosher.)

A. Well, she brought it down once when she was on a visit and showed it to me.

Q. Did she leave it with you?

A. No, she took it back to Portland with her.

Q. Now, did you, by virtue of that power of attorney, execute an assignment of a mortgage held by Julia C.—by Julia Winifred Mosher?

A. That was assigned—I used that power of attorney and assigned a mortgage owned by Julia Winifred Mosher to James D. Collins, her husband.

Q. Now, this instrument here seems to be Plaintiffs' Exhibit No. 4, and it has here an assignment of mortgage, and I will ask you if that is a copy of the assignment of the mortgage which you signed (handing document to witness)?

A. Yes, I am quite sure that that is a correct copy of what I signed.

Q. Did Mr. J. D. Collins know anything about the—your signing this assignment? [18]

A. No, he didn't know anything about it.

Q. Was he present when it was signed?

A. Oh, no.

Q. And what did you do with this assignment after it was made?

A. I put it in my safety box.

Q. And did you ever record that assignment?

A. No, I never recorded it for a long time. I never recorded it until after she was dead.

Q. I believe the assignment shows the date of its recordation. Do you happen to have recollection of when that was?

(Testimony of Hattie L. Mosher.)

A. I believe it was April 21st, 1921. The recordation would show on it.

Q. And you say your daughter died on what date? A. May 4th, 1920.

Q. Did you tell Mr. Collins that you were going to file this assignment for record?

A. Oh, no, I never said anything to him about it.

Q. Did you ever say anything at all to him about the assignment?

A. No, I never told him about it. He don't know about it yet.

Q. Was that assignment in your safety deposit [19] box all the time after you signed it until you recorded it?

A. Yes, it stayed there all the time.

Q. Did you tell your daughter, Julia Winifred Mosher Collins that you had made the assignment?

A. Oh, no, no, no.

Q. Do you know whether this was the separate property of your daughter Julia Winifred Mosher Collins, or whether it was community property?

A. It was separate property. It was money she had before she was married.

Q. Did she leave a will? A. No.

Q. Do you know whether James D. Collins has any interest in that mortgage at this time?

A. No, he got his money.

Q. How did he get it, Mrs. Mosher?

A. Well, I had a good many thousands of dol-



(Testimony of Hattie L. Mosher.)

lars still in my possession that I was taking care of for daughter, so after daughter died I sent it to Mr. Collins for him, so—for his share of the personal property.

Q. Do you know who has occupied Lot 2, Block 3 of Churchill Addition for the last 10 years?

A. O'Connell Brothers have occupied it under a lease from—in September—The lease is in the [20] record, up to the present time.

Q. In September of what year?

A. 1931. They went in on a 5-year lease with the privilege of two and their main payment was that they pay the taxes.

Q. In making that lease, did Mr. O'Connell tell you that he was the same thing as the corporation, or anything of that kind, when that lease was made?

A. Oh, no, no, no. His lawyer attended to that and he just got the lease—his lawyer made out the lease and submitted it to me and I said, "This lease is for a corporation?" He said, "Yes." "Well," I said, "ordinarily I don't lease to a corporation, but in this instance I am willing to lease to the corporation." It was the first time I had ever leased to a corporation.

Q. Well, was that lease ever renewed?

A. That lease carried, what you might call, a self-renewal clause, that the lease was to last until they moved out and they were to—they could have in addition to the 5 years, they could have 2 years longer, which, making—it was really a 7-year lease.

(Testimony of Hattie L. Mosher.)

Q. Have they ever moved out of possession of that particular lot? [21]

A. O'Connell Brothers have never moved out of there.

Q. Now, has your daughter, or had your grand-daughter, Julia C. Collins, been of age 5 years at this time; had your grand-daughter, Julia C. Collins been of age 5 years?

A. No, no, no.

The Court: What year was she born in, Mrs. Mosher?

A. She was born about, oh, a year or two, I don't remember exactly, before her mother died. She—When her mother died she was running, she was on her feet.

Q. You don't know the date of her birth?

A. I think it was just about then, but I was interested in my daughter and not especially in the grand-child. Some, of course.

Mr. Selden: Mrs. Mosher, I believe you filed certified copies of the record in a case in this court, wherein a Special Master deed was issued to Julia C. Collins to this particular land, is that correct?

A. There are some certified copies of exhibits that Mr. Loveless made.

Q. And I believe in this case, which was Equity 319, I believe that you also testified in [22] that case relative to the same things that you have testified to here about the separate property of your daughter, Julia Winifred Mosher, did you?

(Testimony of Hattie L. Mosher.)

A. I think that that was a judgment pro confesso. I had no defense. The complaint was correct and I had no defense. I owed the money and that was all there was to it and she owned the mortgage.

The Court: Who was the plaintiff in that case?

Mr. Selden: Who was plaintiff?

A. Julia C. Collins, by her Guardian ad Litem.

The Court: And you were the defendant?

A. I was a defendant.

The Court: Wasn't that the case in which Mr. and Mrs. O'Connell were made defendants and subsequently the case was dismissed as to them, or was that another one?

A. As I understood it, a man named Van Benschoten and the O'Connells were called the defendants with me and then the lawyer who brought the case told me that she, Julia C Collins, had not been a defendant in the Ganz foreclosure, and that the first mortgage owed no duty to the second mortgage, and I believe they were dismissed.

The Court: Well, that was an action to quiet [23] title?

A. No, that was not a suit to quiet title. That was a foreclosure on a mortgage. This is the first suit to quiet title that was ever brought, that Mr. O'Connell brought.

Mr. Selden: That is all.

Mr. Gust: Through?

Mr. Selden: Yes.

(Testimony of Hattie L. Mosher.)

Cross Examination

Mr. Gust:

Q. Mrs. Mosher, do you recall the hearing before Tom Nealon, as Referee in the Water Users' suit in the year 1919?

A. In the year 1919? I might.

Q. Do you remember your daughter was here at that time? A. Yes, my daughter was here.

Q. And testified in that hearing?

A. I believe she did.

Q. Do you remember that your grand-daughter was here at that time?

A. Well, if she and her nurse was here, she was in the care of her nurse.

Q. I will ask you if it is not a fact that while hearing was going on, your grand-daughter [24] was present in the courtroom and running around the courtroom?

A. I don't recall her being here because her mother never took her any place. She left her home with the nurse.

Q. You don't recall your grand-daughter being present in Tom Nealon's courtroom——

A. (Interposing): Well, Mr. Gust, I can't remember about that, but I have heard you talk about it about ten-thousand times. It seems to be a favorite speech of yours.

Q. Wasn't your grand-daughter 3 years old at that time in 1919? A. How old?

Q. 3 years? A. Oh, no.

(Testimony of Hattie L. Mosher.)

Q. How far was she from 3 years at that time?

A. I couldn't say, Mr. Gust. I just—She was born up at Portland and I didn't meet her until, I think—Well, I can't remember. I am sorry, the grandmother didn't take special interest in her grand-daughter.

Q. When was your daughter married?

A. My daughter was married late—I think she was married late in—late in 1914 or 1915.

Q. Are you sure it was not 1913? [25]

A. Oh, goodness, she was studying in Europe in 1913.

Q. Didn't she come back here in 1913?

A. In 1913?

Q. Yes.

A. My recollection is, Mr. Gust, that we were in Russia, in Saint Petersburg in 1913.

Q. Isn't it a fact she gave several musical recitals here in Phoenix in 1913?

A. My daughter gave recitals?

Q. Yes. A. On what?

Q. Musical recitals.

A. On what instrument?

Q. Well, I am asking you, Mrs. Mosher.

A. Huh?

Q. She was a pianist, wasn't she?

A. My daughter graduated from the Conservatory of Music at Leipsig in 1914 for Grosser Orchestra.



(Testimony of Hattie L. Mosher.)

Q. All right. Now, then, anyhow your granddaughter was here, present, in 1919 and was big enough to walk at that time?

A. I just—She might have been up on her feet. I have got a sort-of a picture she might have been up on her feet, but the nurse took care of her and there wasn't any of my occasion to say— [26] but I know that my daughter didn't take her out with her when she went out.

Q. And your daughter died in May, 1920?

A. She died May 4, 1920.

Q. Some 6 weeks before she died, you went over to Los Angeles to visit her?

A. I believe I went over to Los Angeles, I think it was 2 days before she died.

Q. Yes, and you had been over there from 6 weeks or 2 months before, hadn't you; you went over there about 3 times?

A. No, Mr. Gust. I took especial pains to look back at my bank records and my check records, because you said something about that once before, and I find from my bank records—I could not have gone without money, I find no break in the continuance of my business and no money drawn for fare or expenses until just maybe 2 or 3 days before she died.

Q. Then you saw her after you had made this assignment of mortgage to her husband?

A. Yes, I made this assignment of mortgage, I think, in April.

Q. Yes, and about the same time you, under the

(Testimony of Hattie L. Mosher.)

same power of attorney, made a conveyance of 6 very valuable lots on Van Buren Street? [27]

A. Under the same conveyance?

Q. Yes.           A. No.

Q. Under the same power of attorney, I mean?

A. I never made any two pieces of property in one deed.

Q. Well, I say 6 lots, contiguous lots, being one piece of property you made in one deed, is that right?

A. In one deed with the assignment of mortgage?

Q. No, separate?

A. You are saying that I made a deed to 6 lots on Van Buren Street? I don't think—you are trying to help Mr. Strouss out, but I never made any deed to anybody for any lots on Van Buren Street or any lots anywhere in the Lount Tract.

Q. Isn't it a fact that there were 6 lots, 3 of which were alongside of Van Buren and the other 3 next to it—maybe there were 9 in the same position there, the title to which stood in your daughter's name up to her death, or about to her death?

A. Mr. Gust, if I made any deeds that are of interest in this case, I am sure that Mr. Selden, as attorney, will stipulate that you can put them in the record if you want to, certified [28] copies.

Q. Do you remember whether you made any deeds about the same time you made this assignment from your daughter to her husband some two months before she died?

(Testimony of Hattie L. Mosher.)

A. I never made anything two months before she died. I am pretty sure about that.

Q. Well, you made some deeds about the same time you made this assignment of mortgage, didn't you, under the same power of attorney?

A. I don't think so, Mr. Gust, but I would prefer, if you feel it essential, that you put the certified copies of the deeds in the record.

Q. You afterwards made affidavits that those deeds were delivered prior to your daughter's death, didn't you?

A. An affidavit that what deeds were delivered?

Q. After your daughter's death, you made affidavits to the effect that those deeds were delivered before your daughter's death?

A. I never—I just could not say, but you can put any affidavit in this record if you want to, but I know that all the things were kept in my safety box and that everybody knew it and some people said that that might constitute a delivery. I don't know, but if I wanted to borrow money and [29] if somebody wanted an affidavit signed, why, I probably signed it.

Q. Your daughter also had the title to some property on Moreland Street which you afterwards sold to Harry Fennemore, that is true, isn't it?

A. No, I am going to ask for the protection of the judge. I don't see why a lawsuit with Harry Fennemore should come into this lawsuit. If he thinks it does, he can put in anything he wants to,

(Testimony of Hattie L. Mosher.)

but I don't see why I should go into affairs that do not concern this case.

Mr. Selden: Yes, your Honor, I object to this line, to any questions about a deed to Harry Fennemore as being immaterial in this case, having no bearing on the delivery of this particular assignment in issue here; also, the previous testimony as to other deeds and other deliveries would have no bearing on this case either.

Mr. Gust: I am attempting to cross examine on the two instruments made under the same power of attorney about the same time and under similar circumstances.

The Court: Yes, I think it is proper. If you don't remember, Mrs. Mosher, just say so?

A. Well, it is something I could investigate. I can look at papers and records. [30]

The Court: I say, if you can't answer the question, just say so.

Mr. Gust: Mrs. Mosher, you state, now, that this assignment of this mortgage from your daughter to her husband some month or two before her death which was made by you under this power of attorney, was not delivered until after her death, that is your testimony here, is it?

A. I said it was never delivered either before her death or after her death, and that Mr. Collins has never seen it.

Q. Your memory is very clear on that, is it?

A. My memory is clear, because I put everything

(Testimony of Hattie L. Mosher.)

in my own safety box and kept it there. Why should I scatter things all over the country?

Q. Just about the same time that you made this assignment, you also made a deed from your daughter to her husband on a lot or, perhaps, two lots on Moreland Street, which you purported to make under the same power of attorney, and you put that deed in the same safety deposit box, didn't you?

Mr. Selden: Just a minute. I want to renew my objection as to that, on the ground it is immaterial; does not have any bearing on the delivery on this particular deed. [31]

The Court: You may answer.

Mr. Selden: Or particular assignment.

The Witness: I owned at one time considerable property in East Evergreen. Are you talking about the lots that Doctor Hughes got tax title to?

Mr. Gust: No, I am talking about the lots that Harry Fennemore afterwards bought?

A. I can't remember one thing about those lots.

Q. You don't remember anything about them?

A. I don't remember anything about those.

Q. You do remember that they stood in your daughter's name at the time of your daughter's death, don't you, of record?

A. They were put in my daughter's name?

Q. Is that right?

A. Oh, my daughter, any of the property she owned in East Evergreen, she had bought years and



(Testimony of Hattie L. Mosher.)

years before with some money that, oh, I think her Grandpa Mosher gave it to her.

Q. And after she died you caused your son-in-law, the widower of your daughter, to deed that property to Harry Fennemore, didn't you?

Mr. Selden: Just a minute, I object to that as being immaterial whether she caused her son-in-law to deed something to Harry Fennemore. I don't [32] see the relevancy of that.

The Court: She may answer.

A. Why, I can't remember anything about it. If you want to adjourn the trial and have me hunt up the date, but I can't remember anything about that.

Mr. Gust: There was other property on Van Buren Street that stood in your daughter's name and you made mortgages on that in your son-in-law's name after your daughter's death, and you received the money personally, didn't you?

Mr. Selden: I object to that, your Honor, also being irrelevant and incompetent.

The Court: She may answer.

A. I remember being blackmailed and hounded into the signing of a mortgage by yourself and old man Dye, but I never received one penny for it. I was frightened and threatened if I did not sign that mortgage without receiving any money, then another mortgage would be foreclosed.

Mr. Gust: No, but, didn't you receive——

A. (Interposing): I——

Q. (Interposing): Didn't you receive \$60,000.00 for a mortgage from old man Dye?

(Testimony of Hattie L. Mosher.)

A. I had a mortgage on some Center Street property to Dye. [33]

Q. And you mortgaged it for \$60,000.00, didn't you?

A. I could not say that.

Q. And title to that property—

A. (Interposing): Mr. Gust, can I ask you a question? You have filed a lawsuit against me regarding that property. Are you trying to try your lawsuit in Judge Ling's court instead of trying it in Division 1 in the Superior Court of Maricopa County in the State of Arizona?

Q. I will ask you the questions, Mrs. Mosher. Isn't it a fact that prior to your daughter's death, you, under the power of attorney you held from your daughter, conveyed several properties to her husband and that after she passed away you, through getting deeds from her husband, or mortgages, mortgaged or sold all of that property claiming—and made affidavits that those deeds were delivered before your daughter's death?

A. I think you are mistaken, Mr. Gust.

Mr. Selden: The same objection, your Honor.

The Witness: I have no recollection of making affidavits for that.

Mr. Gust: Don't you remember in the Superior Court, Mrs. Mosher, when you testified on a certain affidavit that Mr. Stallcup had prepared that [34] pertained to that matter?

A. You will have to tell me what case you are talking about in the Superior Court.

(Testimony of Hattie L. Mosher.)

Q. Well, that was the case of—Well, Mr. Claude Dye was one of the parties and Collins was one of the parties. It was Collins against Dye. You recall testifying before Judge Rodgers about a certain affidavit that Mr. Stallcup had prepared?

A. I have a recollection that Mr. Stallcup stole an abstract from me and stole \$50.00 from me. That is all I recollect in connection with Mr. Stallcup is, that he stole \$50.00 from me and stole an abstract from me, and I recollect that Mr. Coggins told me that after you—that after Dye had collected some \$75.00 or \$100.00 in court, that he came down to him and made him pay it over again, and I remember telling him if he wanted to—if Dye wanted to collect first and had such an excellent attorney that he could collect twice, I didn't see how it concerned me. That was a thing between Mr. Coggins and Mr. Dye.

Q. Well, Mrs. Mosher, you testified here that at the time of your daughter's death, you had in your possession considerable money belonging to your daughter? [35]

A. I did have.

Q. You were handling her property and affairs here prior to her death, were you not?

A. Well, Mr. Chalmers, Louis Chalmers handled her investments and arranged about notes where she loaned out money, and things like that, and then at the time she died there was considerable money here that belonged to her.

Q. Yes, how did she get that money?

A. How did she get that money?

(Testimony of Hattie L. Mosher.)

Q. Yes.

A. Did you ever hear of the Lounts—of the Lounts and the Moshers being poor people until after Mr. Gust and Mr. Dye got their fangs on them?

Q. All right. That money was derived by her from her property here? A. From what?

Q. From her property?

A. Money derived from her property? No. She had money from her Grandfather Mosher.

Q. And you were handling it for her, weren't you?

A. Well, I handled it through the advice of Mr. Chalmers, and I had money coming, a good many thousands of dollars was coming to her from the City Ice Delivery Company. She loaned her money [36] on notes to the City Ice Delivery Company and she loaned some on notes to her uncle, W. B. Lount.

Q. What I want to know is, how come it to be paid to you? A. What was?

Q. How this money came to be paid to you?

A. Why, I was the surviving partner of the City Ice Delivery Company.

Q. Isn't it a fact that she gave you power of attorney in 1915 so you could handle her business here?

A. She gave me the power of attorney, I presume, because I told her to, so if anything came up about the property or anything when she was away, that it could be attended to. She was in Oregon. I was here.

Q. That was in 1915 she did that?

(Testimony of Hattie L. Mosher.)

A. The date is on the power of attorney. You filed it yourself.

Q. And you had it ever since that time, didn't you?

A. That power of attorney?

Q. Yes.

A. I have had that power of attorney and have it yet, the original.

Q. You have had it ever since 1915? [37]

A. Yes, sometime, I believe in the Summer of 1915, in July.

Q. And it was under that power of attorney that you purported to make this assignment of mortgage from your daughter to her husband?

A. Yes, unquestionably.

Q. And did you tell Mrs. Ganz about that mortgage having been assigned and the assignment not delivered at the time when you made the mortgage to Mrs. Ganz?

A. I never saw Mrs. Ganz. I dealt with her agent and attorney, Joe Alexander. Joe Alexander called me up and wanted me to come down to his office and told me that he had some money to lend and would I take it, and I did.

Q. Joe Alexander has been dead a good many years?

A. I just don't know when he died, or about it.

Q. You know he is not living now?

A. I think he is not, but I can't keep track of people. I haven't had any occasion——

Q. (Interposing) Now, this assignment of mort-



(Testimony of Hattie L. Mosher.)

gage which is contained here in Plaintiffs' Exhibit 4 recites—"That I, Julia Mosher Collins, married, the party of the first part, for and in [38] consideration of the sum of \$9,000.00, to me in hand paid by my husband, James Dean Collins, commonly known as 'Dean Collins', the party of the second part, the receipt whereof is hereby acknowledged—" Will you verify that by looking at it? (Handing document to witness.) That is correct, isn't it?

A. If it reads that way, it surely is correct.

Q. And you signed that, containing that recital, "Julia Mosher Collins by Hattie L. Mosher, her attorney in fact," isn't it?

A. That is an authentic instrument, I am quite sure. I will see who it is certified to. Some of your certified documents, I noticed, are not correct, but where is the certificate? (Looking over documents.) "Marie Risser", I just don't know her. That is what I signed, Mr. Gust, and while I have never taken your copy down to compare it, I would say that they have compared it very carefully. I have never disputed those certified copies. The only thing is, I said, you put some extraneous matter on the mortgage that was not—

Q. (Interposing) You acknowledged that instrument before J. B. Woodward on the 1st day of [39] March, 1920, didn't you?

A. Yes, I put my personal acknowledgment on it.

Q. On that date?

A. I signed it, I signed this instrument.

(Testimony of Hattie L. Mosher.)

Q. Judge Woodward has been dead a good many years?

A. Judge Woodward died in 1924 at the age 101 years.

Q. I thought you used to say it was 107, Mrs. Mosher?      A. Huh?

Q. I thought you used to say it was 107?

A. 101, but his wife didn't know it.

Mr. Gust: I think that is all.

#### Redirect Examination

Mr. Selden:

Q. Mrs. Mosher, at the time that you procured the Ganz mortgage, you say you had a conversation with Mrs. Ganz's attorney?

A. Yes, with Joe Alexander I had a conversation.

Q. In that conversation was anything said about this Greene and Griffin to Gerard mortgage?

A. To this what?

Q. About the mortgage, was anything said [40] about this first mortgage?

A. Oh, I furnished him with the abstract. He had the abstract in his possession and we spoke about that Gerard mortgage and he said, "Of course," he says, "I understand that this is a second mortgage, but," he says, "I do not loan money on security that is mortgaged. I loan it on the promissory note of someone I know," and, of course, at that time my promissory note was good for a good many hundred thousands of dollars.

Mr. Selden: I think that is all.

(Testimony of Hattie L. Mosher.)

Mr. Gust: Just one question; Your daughter died in Los Angeles, didn't she?

A. My daughter died in Los Angeles.

Q. And was buried there?

A. I don't remember, Mr. Gust.

Q. Anyhow, her body was not brought to Arizona for burial?

A. Her body was not brought to Arizona, that, I know.

Mr. Gust: That is all.

Mr. Selden: I want to ask the witness one question, your Honor, I would like to ask you a question, Mrs. Mosher, then may I continue the examination? I want to ask Mrs. Mosher one question.

(Thereupon Mr. Selden and the witness hold an [41] inaudible conference.)

Mr. Selden: I think that is all.

(Thereupon the witness was excused.)

The Court: Do you have anything else?

Mr. Selden: No—Will you take the stand again, Mrs. Mosher?

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### HATTIE L. MOSHER

resumed the witness stand and testified further as follows:

#### Redirect Examination

Mr. Selden:

Q. Mrs. Mosher, when this Gerard mortgage was

(Testimony of Hattie L. Mosher.)

assigned to your daughter, how much money did she actually pay for it?

A. She paid \$9,000.00 in cash.

Q. Do you know how much cash she actually had on hand at that time?

A. She had a few thousand on hand and she borrowed the rest on her promissory note, because she had more than that much coming in on some notes from the factory and her uncle, and then she, I believe before the notes were really due, she paid the balance of the notes. It was her own money that bought that Gerard mortgage.

Q. Was there any of your money mixed in that? [42]

A. Oh, no, it was none of my money mixed in it. My money bought the lot. I bought the lot. I borrowed money and bought the lot.

Mr. Selden: I think that is all.

Mr. Gust: You say your daughter borrowed money to make up a part of this \$9,000.00 From whom did she borrow it?

A. She borrowed it on a note from the Phoenix National Bank.

Q. Did you sign that note?

A. Me? No, I don't think I signed it. I don't think I indorsed it. Her note would have been good.

Mr. Gust: That is all.

The Witness: But the arrangement was made between Mrs. J. Gerard and my daughter and Mr. Foster. I don't recall being present at the transaction.

Mr. Gust: That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: Is that all you have, Mr. Selden?

Mr. Selden: Yes.

Mr. Gust: Well, we have no rebuttal. If it please the court, I have prepared a memorandum on this—— [43]

Mr. Selden: Your Honor, I have one exhibit here that I would like to submit for evidence. It is a certified copy of a letter and I want to have it marked for identification Defendants' Exhibit E.

(Thereupon the document was so marked.)

Mr. Selden: I will show that to counsel (handing document to Mr. Gust), and I want to introduce that in evidence in support of a part of our answer. It concerns the payment of taxes in the name of O'Connells after this deed to Julia C. Collins was recorded.

Mr. Gust: I think that is entirely immaterial, however, it is not very long. I have no particular objections to its being received except I—it may be received.

Mr. Selden: Your Honor, it may be received in evidence?

The Court: Yes.

(Thereupon the document was received as Defendants' Exhibit E in evidence.)

Mr. Selden: We do have one other, just one statement that I would like to ask Mrs. Mosher about?



The Court: All right.

Mr. Selden: Will you take the stand again? [44]

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HATTIE L. MOSHER

resumed the witness stand and testified further as follows:

Redirect Examination

Mr. Selden:

Q. In the assignment of the mortgage, Mrs. Mosher, which you executed by your power of attorney from Julia Winifred Mosher Collins to J. D. Collins, there is a recitation that a consideration of \$9,000.00 was paid by J. D. Collins, and I will ask you whether or not this money was actually paid by J. D. Collins?

A. Oh, no, no, of course not.

Mr. Selden: That is all.

Recross Examination

Mr. Gust:

Q. You testified a short time ago that he spent considerable money belonging to your daughter after her death?

A. I said that after she died, I sent him money that belonged to her to represent his share of the personal property, in order that my grand-daughter could have all of the linen and china and this mortgage and the heirlooms, in order that the grand-daughter could have all of those I gave him [45] cash. My daughter had a great many thousands of

(Testimony of Hattie L. Mosher.)

dollars worth of linens and china that she bought in Europe, and heirlooms in the family.

Q. You sent considerable money also to your grand-daughter after your daughter's death, didn't you?

A. I don't remember of ever sending my grand-daughter a penny, I am sorry to say, but I don't recall of ever sending her a penny. I sent money to Mr. Collins because he was entitled to it for his share.

Q. Did you send the \$6,000.00 that you got from Mrs. Ganz to your grand-daughter?

A. No, I did not.

Q. Did you send it to Mr. Collins?

A. I put that \$6,000.00 in my pocket and spent it. I am sorry, but I did.

Q. And you knew at the time the property was your grand-daughter's property?

A. I knew at the time that Lot 2, Block 3, Churchill, was not my grand-daughter's property.

Q. That it was, you believed it was anyway?

A. Why, I held title to that. I owned that piece of property.

Q. Yes, but there was a mortgage on it for more than it was worth, which you say belonged to [46] your grand-daughter?

A. Well, I think the property at that time was worth about \$50,000.00.

Mr. Gust: I think that is all.

The Witness: I had paid for it a great—about

(Testimony of Hattie L. Mosher.)

3 or 4 times the amount of that mortgage, I paid for it in cash.

Mr. Gust: That is all.

Mr. Selden: That is all.

(Thereupon the witness was excused.)

Mr. Gust: I have prepared a memorandum, your Honor. I am willing to submit it on memorandum. I believe counsel will submit it on memorandum unless counsel desires to argue it.

Mr. Selden: I will submit it on memorandum.

The Court: All right. How much time do you want?

Mr. Selden: I would like to have about 30 days, your Honor?

The Court: All right, you can have 10 days.

Mr. Gust: All right.

(Thereupon the trial was ended at 11:40 o'clock A. M. of the same day.) [47]

I, Hereby Certify, that the proceedings had and evidence given upon the trial of this cause is contained fully and accurately in the shorthand notes taken by me of said trial, and that the foregoing 47 typewritten pages contain a full, true and accurate transcript of the same.

LOUIS L. BILLAR,

Official Shorthand Reporter.

[Endorsed]: Filed Jun. 27, 1942.

## PLAINTIFF'S EXHIBIT No. 1

In the Superior Court of the State of Arizona,  
County of Maricopa.

No. 35462 B<sup>1</sup>

ELSIE B. GANZ,

Plaintiff,

vs.

HATTIE L. MOSHER, COUNTY OF MARI-  
COPA, a body politic,

Defendants.

## COMPLAINT.

Comes Now the plaintiff and for cause of action  
alleges:

## I.

That the defendant Hattie L. Mosher is a resi-  
dent of Maricopa County, Arizona; that the de-  
fendant the County of Maricopa is a duly organized  
County of the State of Arizona.

## II.

That on or about the 28th day of March, 1928,  
the defendant Hattie L. Mosher for a valuable con-  
sideration executed and delivered to Elsie B. Ganz,  
the plaintiff herein, her said promissory note for  
the sum of Five Thousand Dollars (\$5000.00) due  
five years after date, with interest at the rate of  
eight percent (8%) per annum, payable quarterly,  
and which said promissory note is in words and  
figures as follows, to-wit:

Plaintiff's Exhibit No. 1—(Continued.)

“No 5424

Phoenix, Arizona, March 28th, 1928.

—Five years—after date, without grace, for value received I promise to pay to Elsie B. Ganz or order the sum of Five Thousand—Dollars in U. S. Gold Coin, with interest thereon in like gold coin, at the rate of eight per cent per annum from date until paid. Interest payable quarterly and if not so paid, to be added to the principal and become a part thereof, and to bear interest at the same rate; and if suit be brought or attorney employed to recover on this note I promise to pay attorney's fees ten per cent additional on amount found due on this note.

“All payable at First National Bank of Arizona, at Phoenix, Arizona.

HATTIE L. MOSHER.

\$5000.00, Due March 28th, 1933.

(Endorsements)

Jun 22 1928 100.00 Int. paid to 6/28/28

Dec. 26 1928 100.00 Int. paid to 9/28/28

Mar. 20 1928 100.00 Int. paid to 12-28-28

Jun 21 1929 100.00 Int. paid to Mar 28 1929

Oct 21 1929 100.00 Int. paid to June 28- 1929

Oct 21 1929 100.00 Int. paid to Sept. 28-1929

Jan 13 1930 100.00 Int. paid to Dec-28-1929

May 22 1930 100.00 Int. paid to 6/28/30

Sept 3 1930 100.00 Int. paid to 9/28/30

Jan 6 1931 100.00 Int. paid to 12/28/30



Plaintiff's Exhibit No. 1—(Continued.)  
 8/21/31 100.00 Int. paid to 3/28/30  
 8/21/31 100.00 Int. paid to 6/28/31''

### III.

That in order to secure the payment of said promissory note, together with interest thereon, as provided in said note, the said defendant Hattie L. Mosher, at the same time and as a part of the same transaction executed and delivered to Elsie B. Ganz., the plaintiff herein, her said mortgage upon the following described premises, to-wit:

“Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.”

which said mortgage was conditioned for the payment of said promissory note and was duly acknowledged so as to entitle the same to be recorded, and was thereafter on the 28th day of March 1928, duly recorded in the Recorder's Office of Maricopa County, Arizona, in Book 209 of Mortgages, at pages 562 and 563 thereof. A copy of said mortgage, marked Exhibit “A” is hereto attached and made a part hereof.

### IV.

That it is provided in said note, among other things, as follows:

“And if suit be brought or an attorney employed to recover on this note, I promise to pay

Plaintiff's Exhibit No. 1—(Continued.)  
attorney fees 10% additional on the amount  
found due on this note”

and it is provided in said mortgage, as follows:

“Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments ordinary and extra-ordinary, assessed or levied upon and against said premises, and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments or any part thereof, when due, and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or encumbrances on said premises, or to protect the title thereto in said mortgagor, or to protect the validity of this mortgage as a second lien on said premises, including the expense of search of title, shall thereupon immediately become due and payable and which said payments shall become a part of the principal sum hereby secured, and shall bear interest at the same rate per annum, payable quarterly.

But it is distinctly understood and agreed that if any sum of the principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee, according to the provisions of said note,

Plaintiff's Exhibit No. 1—(Continued.)

or this mortgage, be not paid when due, or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any of the agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case, the principal sum mentioned in said promissory note, with interest thereon, may at the election of said mortgagee, be deemed and taken to be wholly due and payable, and payment thereof may be enforced by the foreclosure of this mortgage, or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and encumbrances, as well as all other payments said mortgagee may be obliged to make for her security, as aforesaid, with interest thereon at the rate of 8% per annum, and also to pay said mortgagee as and for attorney fees in case suit is brought to foreclose this mortgage or recover on said note, 10% on the amount due plaintiff on said note or this mortgage, or in case of settlement after suit brought, but before judgment rendered, then 5% on the amount so found due at the time of settlement, and which attorney fee shall be included in the judgment rendered, and be a lien on said premises, and it is further agreed and understood that pending foreclosure proceedings the

Plaintiff's Exhibit No. 1—(Continued.)

plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof, until redemption thereof is made or a Sheriff's deed is issued therefor''.

V.

That notwithstanding said covenants and said mortgage, the defendant Hattie L. Mosher, has wholly failed, neglected and refused to pay the State and County taxes assessed against said property for the years 1927, 1928, 1929 and 1930, amounting to the total sum of Two Thousand Two Hundred Seventy-four and 72/100 (\$2274.72) Dollars, and the taxes of the City of Phoenix for the years 1929 and 1930, amounting to the total sum of Seven Hundred Eighteen and 58/100 (\$718.58) Dollars, and has allowed the same to become delinquent, for which reason the full amount of the principal sum of said note and mortgage has become due and payable, according to the covenants of said mortgage and has been so declared by the plaintiff.

VI.

This plaintiff further alleges that it is provided in said mortgage hereinbefore referred to, that in case said mortgagor, the defendant herein fails to pay said taxes, that the plaintiff may pay the same and add the amount so paid to the sum secured by the mortgage, and that the plaintiff, in order to protect her lien in said premises, did on the 15th day

Plaintiff's Exhibit No. 1—(Continued.)  
of September, 1931, pay to the County Treasurer of Maricopa County, Arizona, the sum of Two Thousand Two Hundred Seventy-four and  $72/100$  (\$2274.72) Dollars, and to the City Treasurer of the City of Phoenix, the sum of Seven Hundred Eighteen and  $58/100$  (\$718.58) Dollars, for delinquent taxes assessed against said premises above described, which said taxes were duly assessed on said premises and were a lien and encumbrance legally attaching thereto.

#### VII.

That plaintiff was at the date of execution thereof and is now the holder of said note and mortgage before described.

#### VIII.

That by reason of the failure of the said defendant Hattie L. Mosher, to pay the 1927, 1928, 1929 and 1930 State and County taxes, and the 1930 personal property tax liens assessed in the name of Hattie L. Mosher, and the 1929 and 1930 taxes of the City of Phoenix, as provided in said note and mortgage, the plaintiff herein has elected to declare and has declared the whole of said promissory note, together with interest thereon, due and unpaid, to be immediately due and payable, and that there is now due the plaintiff herein upon said promissory note and mortgage the principal sum of Five Thousand Dollars (\$5000.00), with interest thereon from the 28th day of March, 1928, at the rate of Eight percent (8%) per annum, as provided in said



Plaintiff's Exhibit No. 1—(Continued.)

note and mortgage until paid, and the further sum of Two Thousand Two Hundred Seventy-four and  $72/100$  (\$2274.72) Dollars for State and County Taxes, and Seven Hundred Eighteen and  $58/100$  (\$718.58) Dollars for City Taxes., and the further sum of Twelve Dollars (\$12.00) for the foreclosure search, together with the further sum of Ten per cent (10%) of the amount which shall be found due upon said note and mortgage, as attorney fees, as provided therein.

#### IX.

Plaintiff further alleges that said mortgage further provides, among other things, that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same to preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a Sheriff's deed is issued therefor.

#### X.

Plaintiff further alleges that the defendant Maricopa County, a body politic, has or claims to have some right, title or interest in or lien upon said premises; that plaintiff alleges that any right, title or interest that said defendant has in or to said premises is subsequent to the lien of said mortgage and subject thereto.

Wherefore, plaintiff prays judgment, finding and declaring the amount due to said plaintiff upon the promissory note and mortgage hereinbefore de-

Plaintiff's Exhibit No. 1—(Continued.)

scribed, together with the amounts advanced by plaintiff herein, in payment of delinquent taxes upon said premises, together with the amount expended by said plaintiff for foreclosure search, and the attorney fees as provided in said note and mortgage, and for plaintiff's costs laid out and expended in said action, and that the amount so found to be due to the plaintiff may be adjudged to be a lien on the premises hereinafter described, and that said lien attached thereto on the 28th day of March, 1928, and that said lien is prior and superior to any right, title, interest or claim upon said premises by the defendants herein named, or either of them.

That a Receiver may be appointed herein by this Court with power to care for and maintain said premises, and to collect and receive all the rents now due or to become due, and to apply the same to the payment of the sums which shall be found due to the plaintiff on said note and mortgage.

That the usual decree may be entered directing the Sheriff of Maricopa County, Arizona to seize and sell the following described property, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

as under execution in accordance with law and the practice of this Court, and that the proceeds of the sale may be applied in payment of the amount found due to the plaintiff as aforesaid; that in case

Plaintiff's Exhibit No. 1—(Continued.)

said premises shall not be redeemed from said sale within the time required by law, that the Sheriff execute and deliver to the purchaser at said sale, a good and sufficient deed to said premises, and that the defendants herein and all persons claiming by, through or under them, be forever foreclosed of any asserted right, title or interest in and to said premises, and estopped and barred from claiming any right, title or interest in and to said premises, or any part thereof adverse to this plaintiff, and that the plaintiff may have such other and further relief as to the Court may seem meet and proper.

HENRY J. SULLIVAN,  
Attorney for Plaintiff.

And for a Further and Second Cause of Action against the defendant Hattie L. Mosher, plaintiff alleges:

I.

That the defendant Hattie L. Mosher is a resident of Maricopa County, Arizona; that the defendant the County of Maricopa is a duly organized County of the State of Arizona.

II.

That on or about the 1st day of March, 1929, the defendant Hattie L. Mosher, for a valuable consideration executed and delivered to Elsie B. Ganz., the plaintiff herein, her said promissory note for the sum of Six Thousand Dollars (\$6000.00) due three years after date, with interest at the rate of eight per cent (8%) per an-

Plaintiff's Exhibit No. 1—(Continued.)

num, payable quarterly, and which said promissory note is in words and figures as follows, to-wit:

“No. 5609 Phoenix, Arizona, March 1st 1929  
 .....Three years.....after date with-  
 out grace, for value received, I promise to pay  
 to Elsie B. Ganz or order, the sum of.....  
 Six Thousand.....Dollars, with interest  
 thereon at the rate of eight per cent per an-  
 num, from date until paid.

Interest payable quarterly.....and if  
 not so paid to be added to the principal and  
 become a part thereof, and bear interest at  
 the same rate, and should the interest not be  
 paid when due then the whole sum of prin-  
 cipal and interest shall become immediately  
 due and payable, at the option of the holder  
 of this note. Should suit be brought to re-  
 cover on this note, I promise to pay as at-  
 torney's fees ten per cent additional on amount  
 found due on this note,

Principal and interest payable in U. S. Gold  
 Coin. All payable at First National Bank of  
 Arizona, Phoenix, Arizona.

HATTIE L. MOSHER.

\$6000.00 Due March 1st, 1932.

(endorsements)

May 31, 1929	\$120	Int. paid to 6-1-29
Oct. 21 1929	120.	Int. paid to 9-1-29
Dec. 3, 1929	120.00	Int. paid to 12-1-29
May 22, 1930	120.00	Int. paid to 6-4-30
9-3-30	120.00	Int. paid to 9-1-30

Plaintiff's Exhibit No. 1—(Continued.)

Jan. 6, 1931	120.00	Int. paid to 12-1-30
8/21/31	120.00	Int. paid to 3/1/31
8/21/31	120.00	Int. paid to 6/1/31''

### III.

That in order to secure the payment of said promissory note, together with interest thereon, as provided in said note, the said defendant Hattie L. Mosher, at the same time and as a part of the same transaction, executed and delivered to Elsie B. Ganz, the plaintiff herein, her said mortgage upon the following described premises, to-wit:

“Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.”

which said mortgage was conditioned for the payment of said promissory note and was duly acknowledged so as to entitle the same to be recorded, and was thereafter on the 6th day of March 1929, duly recorded in the Recorder's Office of Maricopa County, Arizona, in Book 225 of Mortgages, pages 481 and 482 thereof. A copy of said mortgage, marked Exhibit “B” is hereto attached and made a part hereof.

### IV.

That it is provided in said note, among other things, as follows:

“Should suit be brought to recover on this



Plaintiff's Exhibit No. 1—(Continued.)

note, I promise to pay as attorney's fees ten per cent additional on the amount found due on this note."

and it is provided in said mortgage as follows:

"Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a first lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assess-

## Plaintiff's Exhibit No. 1—(Continued.)

ments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate of 8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note and this

Plaintiff's Exhibit No. 1—(Continued.)  
mortgage, or in case of settlement after suit brought but before judgment rendered, then five per cent on the amount so found due at the time of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises.

And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor."

#### V.

That notwithstanding said covenants and said mortgage the defendant Hattie L. Mosher has wholly failed, neglected and refused to pay the State and County taxes assessed against said property for the years 1927, 1928, 1929 and 1930, and the taxes of the City of Phoenix for the years 1929 and 1930, and plaintiff has elected to and did declare the full amount of the principal sum of said note and mortgage due and payable according to the covenants of said mortgage.

#### VI.

This plaintiff further alleges that it is provided in said mortgage hereinbefore referred to that in case said mortgagor, the defendant herein, fails to pay said taxes, that the plaintiff may pay

## Plaintiff's Exhibit No. 1—(Continued.)

the same and add the amount so paid to the sum secured by the mortgage, and that the plaintiff, in order to protect her lien in said premises, was compelled to and did on the 15th day of September, 1931, pay to the County Treasurer of Maricopa County, Arizona, the sum of Two Thousand Two Hundred Seventy-four and 72/100 Dollars (\$2274.72), and to the City Treasurer of the City of Phoenix, Arizona, the sum of Seven Hundred Eighteen and 58/100 Dollars (\$718.58) for delinquent taxes assessed against said premises above described, which said taxes were duly assessed on said premises and were a lien and encumbrance legally attaching thereto.

## VII.

That plaintiff was at the date of the execution thereof and is now the holder of said note and mortgage hereinbefore described.

## VIII.

That by reason of the failure of the defendant Hattie L. Mosher to pay the taxes hereinbefore referred to, as provided in said note and mortgage, plaintiff herein has elected to declare and has declared the whole of said promissory note, together with interest thereon, due and unpaid, to be immediately due and payable, and that there is now due the plaintiff herein upon said promissory note and mortgage the principal sum of Six Thousand Dollars (\$6000.00) with interest thereon from the 1st day of March, 1929, at the rate of Eight per-

Plaintiff's Exhibit No. 1—(Continued.)  
cent (8%) per annum, as provided in said note and mortgage until paid, together with the further sum of Ten percent (10%) of the amount which shall be found due upon said note and mortgage, as attorney's fees, as provided therein.

#### IX.

Plaintiff further alleges and said mortgage further provides, among other things, that pending foreclosure proceedings, plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises, without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption therefor is made or Sheriff's deed is issued.

#### X.

Plaintiff further alleges that the defendant Maricopa County, a body politic, has or claims to have some right, title or interest in or lien upon said premises; that plaintiff alleges that any right, title or interest that said defendant has in or to said premises is subsequent to the lien of the said mortgage and subject thereto.

Wherefore, plaintiff prays judgment, finding and declaring the amount due to said plaintiff upon the promissory notes and mortgages hereinbefore described, together with the amounts advanced by the plaintiff herein in payment of delinquent taxes upon said premises, together with the amount expended by said plaintiff for foreclosure search and the attorney's fees, as provided in said notes and



Plaintiff's Exhibit No. 1—(Continued.)

mortgages, and for plaintiff's costs laid out and expended in said action, and that the amounts so found to be due to the plaintiff may be adjudged to be a lien on the premises hereinafter described, and that said lien attached thereto on the 1st day of March, 1929, and that said lien is prior and superior to any right, title, interest or claim upon said premises by the defendants herein named, or either of them.

That a Receiver may be appointed herein by this Court with power to care for and maintain said premises, and to collect and receive all the rents now due or to become due, and to apply the same to the payment of the sums which shall be found due to the plaintiff on said note and mortgage.

That the usual decree may be entered, directing the Sheriff of Maricopa County, Arizona, to seize and sell the following described property, to-wit:  
Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

as under execution and in accordance with law and practice of this Court, and that the proceeds of the sale may be applied in payment of the amount found due to the plaintiff, as aforesaid; that in case said premises shall not be redeemed from said sale within the time required by law, that

Plaintiff's Exhibit No. 1—(Continued.)  
the Sheriff execute and deliver to the purchaser at said sale, a good and sufficient deed to said premises, and that the defendants herein and all persons claiming by, through, or under them, be forever foreclosed of any asserted right, title or interest in and to said premises, and estopped and barred from claiming any right, title or interest therein, or any part thereof, adverse to this plaintiff; and that the plaintiff may have such other and further relief as to the Court may seem meet and proper.

HENRY J. SULLIVAN

Attorney for plaintiff.

State of Arizona

County of Maricopa—ss.

Elsie B. Ganz, being first duly sworn, deposes and says:

That she is the plaintiff in the above entitled matter; that she has read the above and foregoing complaint, knows the contents thereof and that the matters and things therein are true of her own knowledge, except as to those matters stated upon information and belief, and as to those matters she believes it to be true.

ELSIE B. GANZ

Subscribed and sworn to before me this 16th day of September, 1931.

[Seal]

MARION E. JACQUES

Notary Public

My commission expires July 18, 1934.

Plaintiff's Exhibit No. 1—(Continued.)

“EXHIBIT A”

REALTY MORTGAGE

Know All Men by These Presents:

That Hattie L. Mosher, a widow, Mortgagor, of the City of Phoenix, Maricopa County, State of Arizona, for and in consideration of the sum of Five Thousand—(\$5,000) Dollars, to her in hand paid by Elsie B. Ganz, Mortgagee, has granted, sold and conveyed and by these presents does grant, sell and convey unto said Elsie B. Ganz, Mortgagee, that certain lot, piece or parcel of land lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

To Have and to Hold the above described property and premises together with all the improvements and appurtenances now or that hereafter may be placed thereon, and with all rights and privileges therein or thereto in anywise belonging or pertaining, unto the said Elsie B. Ganz, her heirs and assigns *foreve*.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note of even date herewith signed and delivered by the said mortgagor to the said mortgagee for the

Plaintiff's Exhibit No. 1—(Continued.)

sum of Five Thousand Dollars payable five years after date with interest thereon at the rate of 8 per cent per annum from date until paid, interest payable quarterly.

Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a second lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assessments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate

## Plaintiff's Exhibit No. 1—(Continued.)

of 8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note, ten per cent on the amount due plaintiff on said note or this mortgage, or in case of settlement after suit brought but before judgment rendered then five per cent on the amount so found due at the



Plaintiff's Exhibit No. 1—(Continued.)  
time of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises. And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor.

In Witness Whereof the said Mortgagor has hereunto set her hand this 28th day of March, 1928.

HATTIE L. MOSHER

State of Arizona

County of Maricopa—ss.

This instrument was acknowledged before me this 28th day of March, 1928, by Hattie L. Mosher.

[Seal]

IDA N. LOSCH

Notary Public

My commission expires Sept. 14, 1931.

Plaintiff's Exhibit No. 1—(Continued.)

(On Cover)

Compared

10290

Paged—Indexed

Realty Mortgage

From Hattie L. Mosher to Elsie B. Ganz

Dated March 28th 1928

Recorder's Office

Phoenix, Maricopa County, Ariz.

Filed and recorded at request of J. L. B. Alexander

Date Mar. 28, 1928

at 1:32 P. M.

Book 209 Mtg. pages 562-563

W. H. LINVILLE

County Recorder

By ADDIE F. MAUZY

Deputy

State of Arizona

County of Maricopa—ss.

I, W. H. Linville, County Recorder in and for the County and State aforesaid, do hereby certify that the within instrument was filed for record at 1:32 o'clock P.M., on this 28th day of March, 1928, and duly recorded in Book No. 209 of Mortgages, Records of Maricopa County, Arizona, at pages 562-563.

Witness my hand and official seal the day and year above written.

[Seal]

W. H. LINVILLE

County Recorder

By IRENE COLEMAN

Deputy

Plaintiff's Exhibit No. 1—(Continued.)

“EXHIBIT B”

REALTY MORTGAGE

Know All Men by These Presents:

That Hattie L. Mosher, a widow, Mortgagor, of the City of Phoenix, Maricopa County, State of Arizona, for and in consideration of the sum of Six Thousand...(\$6000.00) Dollars, to her in hand paid by Elsie B. Ganz, Mortgagee, has granted, sold and conveyed and by these presents does grant, sell and convey unto said Elsie B. Ganz, Mortgagee, that certain lot, piece or parcel of land lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix, according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

To Have and to Hold the above described property and premises together with all the improvements and appurtenances now or that hereafter may be placed thereon and with all rights and privileges therein or thereto in anywise belonging or pertaining, unto the said Elsie B. Ganz, her heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note of even date herewith signed and delivered by the said mortgagor to the said mortgagee for the

## Plaintiff's Exhibit No. 1—(Continued.)

sum of Six Thousand Dollars payable three (3) years after date with interest thereon at the rate of 8 per cent per annum from date until paid, interest payable quarterly.

Said mortgagor also agrees to pay when due and before delinquent all taxes and assessments, ordinary and extra-ordinary, assessed or levied upon and against said premises and every part thereof, and that in case said mortgagor shall fail to pay said taxes or assessments, or any part thereof, when due and before delinquent, then said mortgagee may at her option pay such taxes or assessments, and the amount or amounts so paid by said mortgagee on account of said taxes or assessments, as well as all other payments that said mortgagee may be obliged to make for her security on account of liens or incumbrances on said premises, or to protect the title thereof in said mortgagor, or to protect the validity of this mortgage as a first lien on said premises, including expenses of search of title, shall thereupon immediately become due and payable, and which payments shall become a part of the principal sum hereby secured and shall bear interest at the same rate per annum payable quarterly.

This instrument shall be void if the principal sum of said promissory note with the interest thereon and all other sums paid by said mortgagee on account of taxes, assessments, liens or incumbrances and other payments made by her as aforesaid, together with interest thereon at the rate of

## Plaintiff's Exhibit No. 1—(Continued.)

8 per cent per annum, shall be paid when due, but it is distinctly understood and agreed that if any sum of principal or interest mentioned in said promissory note, or any other sums to be paid by said mortgagor to said mortgagee according to the provisions of said note or this mortgage be not paid when due or as herein provided to be paid, or if said mortgagor shall fail to keep and perform any other agreements, stipulations or conditions herein contained or contained in said promissory note to be kept and performed on her part, then in such case the principal sum mentioned in said promissory note with interest thereon may at the election of said mortgagee be deemed and taken to be wholly due and payable and payment thereof may be enforced by the foreclosure of this mortgage or otherwise, in which event it shall be lawful to include in the judgment that may be rendered and entered all sums of money paid by said mortgagee on and for said premises on account of taxes, assessments, liens and incumbrances as well as all other payments said mortgagee may be obliged to make for her security as aforesaid, with interest thereon at the rate of 8 per cent per annum, and also to pay said mortgagee as and for attorneys fees in case suit is brought to foreclose this mortgage or recover on said note and this mortgage, or in case of settlement after *suit* brought but before judgment rendered then five per cent on the amount so found due at the time



Plaintiff's Exhibit No. 1—(Continued.)

of settlement, and which attorney fee shall be included in the judgment rendered and be a lien on said premises. And it is further agreed and understood that pending foreclosure proceedings the plaintiff in the case shall be entitled to the appointment of a Receiver of said mortgaged premises without notice or bond, to take possession of the same and preserve and protect said property and collect the rents, issues and profits thereof until redemption thereof is made or a sheriff's deed is issued therefor.

In Witness Whereof, the said Mortgagor has hereunto set her hand this 1st day of March, 1929.

**HATTIE L. MOSHER**

State of Arizona

County of Maricopa—ss.

This instrument was acknowledged before me this 6th day of March, 1929, by Hattie L. Mosher.

[Seal]                    IDA N. LOSCH.

Notary Public.

My commission expires Sept. 14, 1931.

Plaintiff's Exhibit No. 1—(Continued.)  
(On cover)

REALTY MORTGAGE

From Hattie L. Mosher to Elsie B. Ganz

Dated March 1st, 1929

Recorder's Office

Phoenix, Maricopa County, Ariz.

Filed and recorded at request of

J. L. B. ALEXANDER

Date Mar. 6, 1929

at 11:27 A. M.

Book 225 Mtgs

Pages 481-482

J. K. WARD,

County Recorder.

By ADDIE F. MAUZY,

Deputy.

State of Arizona,

County of Maricopa—ss.

I, J. K. Ward, County Recorder in and for the County and State aforesaid do hereby certify that the within instrument was filed for record at 11:27 o'clock A.M. on this 6th day of March 1929 and duly recorded in Book No. 225 of Mortgages Records of Maricopa County, Arizona, at pages 481-482.

Witness my hand and official seal the day and year above written.

[Seal]

J. K. WARD

County Recorder.

By LAMAR HEDGPETH

Deputy.

Plaintiff's Exhibit No. 1—(Continued.)

“Received copy of within complaint and Summons this 16th day of Sept., 1931.

DUDLEY W. WINDES,

By HHM

Deputy County Attorney.

Entered by G. H. Austin.

[Endorsed]: Filed Sep. 16, 1931.

Indexed.

[Title of Superior Court and Cause.]

### SUMMONS

The State of Arizona to

Hattie L. Mosher, County of Maricopa, a body politic, Defendants, Greeting:

You Are Hereby Summoned and required to appear in an action brought against you by the above-named plaintiff in the Superior Court of Maricopa County, State of Arizona, and answer the Complaint therein filed with the Clerk of said Court, at Phoenix, in said County, within twenty days after the service upon you of this Summons, if served in this said County, or in all other cases within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the Superior Court of Maricopa County, State of Arizona, this 16th day of September, 1931.

[Seal] WALTER S. WILSON,

Clerk of the Superior Court.

By G. F. ELLSWORTH,

Deputy Clerk.

## Plaintiff's Exhibit No. 1—(Continued.)

State of Arizona,

County of Maricopa—ss.

I Hereby Certify that I received the within Summons on the 16th day of September, A.D., 1931, at the hour 4:35 P. M. and personally served the same on the 17th day of September, A. D. 1931 on Hattie L. Mosher, being one defendant named in said Summons, by delivering to her, in person, in the County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said Summons.

Dated this 17th day of September, A. D. 1931.

J. R. McFADDEN,

Sheriff.

By JOHN FINNEY,

Deputy Sheriff.

Fees, Service .....	\$1.50
Copies .....	.....
Travel—1 miles .....	\$.30
Publication .....	.....
	———
Total .....	\$1.80

(On cover)

J. R. McFADDEN,

Sheriff.

Received Sep. 16, 1931, 4:35 P. M.

[Endorsed]: Filed Sep. 21, 1931.

Entered by G. H. Austin.

Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

DEMURRER

Comes now the defendant Hattie L. Mosher by John W. Ray, attorney and demurs to the complaint herein and the first cause of action thereof upon the grounds and for the reason that the facts therein stated do not present a present cause of action in the plaintiff as the note copied therein and declared on is not, by its terms due until five years after March 28th 1928, its date, which has not yet elapsed.

Defendant also demurs to the second cause of action upon the ground and for the reason that the statements therein show on the face thereof that the note copied and set out in the complaint is not, by its terms, due until three years after March 1st 1929, which has not yet elapsed and the cause of action is premature, if any there be stated.

Upon these causes of demurrer defendant prays the judgment of the court.

JNO. W. RAY

John W. Ray for defendant.

[Endorsed]: Filed Oct. 6, 1931.

Entered by G. H. Austin.



Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

ANSWER

Comes now the defendant H. L. Mosher by John W. Ray attorney, and for answer to the complaint, answering says:

(I)

To the first cause of action set out, defendant admits the execution of a note and mortgage of the kind and character described in the complaint, but she denies each and every other allegation therein contained,

(II)

To the second cause of action set out, defendant admits the execution of a note and mortgage of the kind and character described in the complaint, and denies each and every other allegation therein contained.

(III)

Further answering the second cause of action defendant says that on September first 1931, defendant paid and the plaintiff accepted as payment on such note the sum of one hundred and twenty dollars, which is not credited on the note and in the complaint, and for that sum and amount she is entitled to credit.

(IIII)

For further answer to each and both paragraphs defendant says that at the date and time of the exe-

## Plaintiff's Exhibit No. 1—(Continued.)

cution and delivery of each of the notes and the mortgages herein sued on, there was a delinquency of taxes due on the property and that that fact was known to the plaintiff; that at that time the defendant was contesting the validity of the assessment of the taxes in an action in the District Court of the United States for the district of Arizona; that these facts were well known to the plaintiff; that such action is still pending and undetermined; that with full knowledge of such controversy over the taxes the plaintiff has repeatedly accepted payments of interest from the defendant without any intimation or suggestion that payment of the taxes would be demanded or that default on that account would be insisted on; that even after a demand for the payment of taxes had been made by the plaintiff, in August of 1931, the plaintiff accepted payments of interest on said notes up until September first 1931, and defendant had no notice of an election by the plaintiff or of an intention by the plaintiff to attempt to declare the notes due for the nonpayment of taxes; that by reason of the facts herein above set out the plaintiff is estopped to declare the notes due and payable at this time, one more than eighteen months and the other note, two and one-half years before the contracted maturity. That for that reason the notes sued on are not due and the action is prematurely instituted.

Wherefore defendant prays that the action and

Plaintiff's Exhibit No. 1—(Continued.)

both causes be dismissed without prejudice to a future action when the notes become due by their terms and for her costs herein and for all proper relief.

JNO. W. RAY,  
John W. Ray, Attorney.

“Received copy of the within Answer this 26th day of Oct., 1931.

HENRY J. SULLIVAN,  
Atty. for plaintiff.

No. 35462.

[Endorsed]: Filed Oct. 26, 1931.

[Title of Superior Court and Cause.]

#### DECREE OF FORECLOSURE

This Cause Coming on Regularly to be heard on the 26th day of December, 1931; plaintiff appearing in person and by Counsel, Henry J. Sullivan, and the defendant Hattie L. Mosher appearing in person and by her attorney, and the defendant Maricopa County not appearing and default having been entered against it; and the plaintiff having introduced evidence both oral and documentary as by law required in support of the allegations set forth in her complaint; and the defendant Hattie L. Mosher, having introduced no evidence, and the plaintiff and defendant Hattie L. Mosher having duly rested their case, and the Court being fully advised in the premises, finds:

That the allegations set forth in the plaintiff's complaint are true; and

## Plaintiff's Exhibit No. 1—(Continued.)

That the plaintiff is entitled to a foreclosure and the relief as set forth in her complaint herein.

It Is Therefore Ordered, Adjudged and Decreed that the plaintiff herein, Elsie B. Ganz, do have and recover of and from the defendant, Hattie L. Mosher, the principal sum of Five Thousand Dollars (\$5000.00) upon the first cause of action, and the principal sum of Six Thousand Dollars (\$6000.00) upon the second cause of action, together with interest upon the principal sum of \$5000.00 at the rate of Eight (8) per cent per annum from the 28th day of June, 1931, as set forth in the first cause of action; and interest at the rate of Eight (8) per cent per annum from the 1st day of September, 1931, upon the principal sum of \$6000.00, as set forth in said second cause of action, until paid, together with the further sum of Two Thousand Nine Hundred Ninety-three and  $\frac{30}{100}$  (\$2993.30) Dollars, heretofore paid by the plaintiff as and for City, County, and State taxes upon said premises, duly assessed thereon and legally attaching thereto; together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search; together with the further sum of Two Hundred and Fifty Dollars (\$250.00) as and for attorney's fees, and the further sum of Twenty-three and  $\frac{80}{100}$  (\$23.80) Dollars as and for costs herein expended for the plaintiff.

## Plaintiff's Exhibit No. 1—(Continued.)

That all and singular the mortgaged premises described in said complaint as

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder or said County and State

or so much thereof as may be sufficient to raise the amount found due to plaintiff for principal, interest, attorney's fees, taxes costs and expenses of sale, be sold at public auction by or under the direction of the Sheriff of Maricopa County; that said sale be made in Maricopa County and that the said Sheriff give due notice of the time and place of the sale, according to the course and practice of this Court, and the laws relating to the sale of Real Estate under Execution; that the plaintiff, or any of the parties to this suit may become purchasers at said sale; that the said Sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of said mortgage premises; that the Sheriff, out of the proceeds of said sale, retain his fees, disbursements and commissions on said sale, and pay to the plaintiff or her attorney the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest from the dates as hereinbefore provided at the rate of Eight (8) per cent per annum until paid; together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff



## Plaintiff's Exhibit No. 1—(Continued.)

for foreclosure search; together with the further sum of Two Hundred and Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars, as costs incurred by the plaintiff herein;

That the Sheriff take receipt for the amount so paid and return the same to this Court with a report of the sale; that any surplus arising from the said sale, if any there be, be returned to this Court by the said Sheriff within five days after such surplus has been received and shall be ascertained to abide the further Order of this Court;

That if the sale of said property at foreclosure does not bring sufficient to cover the above amounts, the plaintiff have judgment against the defendant Hattie L. Mosher, for any deficiency;

That the purchaser or purchasers of said mortgaged premises at such Sheriff's sale, be let into possession thereof and that any of the parties to this action, who may be in possession of said premises, or any part thereof, or any parties since the commencement of this action, who have come into the possession under them, deliver possession thereof to said purchaser, or purchasers, on production of Sheriff's deed for such premises, or any part thereof;

That the defendants, and each of them, and all persons claiming by, through or under them, be forever foreclosed of and forever estopped and barred from claiming any right, title or interest

Plaintiff's Exhibit No. 1—(Continued.)  
in or to said premises, or any part thereof adverse to this plaintiff.

Done in open Court this 4th day of January, 1932.

JOSEPH S. JENCKES,  
Judge.

“Received Copy 12/30/31.

JNO. W. RAY.

[Endorsed]: Filed Jan. 5, 1932.

Docketed.

Recorded Book X Page 259.

Issued Special Execution.

Entered by G. H. Austin.

[Title of Superior Court and Cause.]

### SPECIAL EXECUTION

State of Arizona, to the Sheriff of Maricopa County,  
Arizona, Greetings:

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest thereon from the 28th day of June, 1931, at the rate of Eight (8) per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of Eight (8) per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the

## Plaintiff's Exhibit No. 1—(Continued.)

plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars for costs herein incurred by the plaintiff; together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State

and that said property, together with all the right, title, interest and claim which the defendant has or claims to have had be seized and sold as under execution by the Sheriff of Maricopa County, Arizona, in satisfaction of said judgment, and the proceeds of such sale, after the payment of costs and expenses thereof, be paid to the plaintiff or her attorney to be applied on and toward the satisfaction of such judgment;

Now Therefore, you, the said Sheriff are hereby commanded that you proceed to seize and sell the premises and property hereinbefore described as under execution, together with all of the right, title, claim and interest which the defendant Hattie L.

Plaintiff's Exhibit No. 1—(Continued.)

Mosher, had herein on the 28th day of March, 1928;

Herein fail not under penalty of the law to make due return hereof showing that you have executed this return before this Court at the Court House in the City of Phoenix, Arizona within Ninety (90) days after the receipt hereof.

Witness the Honorable Joseph S. Jenckes, Judge of the Superior Court of Maricopa, Arizona, at the Court House of said County this 5th day of January, 1932.

Given under my hand and seal of office of said Court the day and year last above written.

WALTER S. WILSON,

Clerk of the Superior Court.

[Court Seal]

By L. H. BUCK,

Deputy.

No. 35462

[Endorsed]: Filed Apr. 7, 1932.

### AFFIDAVIT OF PUBLICATION

I, H. C. Reed, Manager of the Glendale News, a newspaper of general circulation, published weekly in the city of Glendale, state of Arizona, do solemnly swear that a copy of the notice in the matter of

Sheriff's Notice of Sale

No. 35462

as per clipping attached hereto was published in

Plaintiff's Exhibit No. 1—(Continued.)

the regular and entire edition of said newspaper and not in any supplement thereof for four consecutive weeks, as follows, to-wit:

Jan. 7-14-21-28, 1932.

H. C. REED.

Subscribed and sworn to before me this 30 day of Jan., 1932.

[Seal]

P. J. WHITE,

Notary Public.

My Commission expires 10/30/33.

[Title of Superior Court and Cause.]

SHERIFF'S NOTICE OF SALE OF REAL  
PROPERTY ON SPECIAL EXECUTION

Under and by virtue of a special execution issued out of and under the seal of the Superior Court of Maricopa County, Arizona, on the 5th day of January, 1932, and to me as Sheriff duly directed and delivered in the above entitled action;

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant, Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest thereon from the 28th day of June, 1931, at the rate of eight per cent per annum on \$5000.00 of said sum, and with interest from the



Plaintiff's Exhibit No. 1—(Continued.)

1st day of September, 1931, at the rate of eight per cent per annum on \$6000.00 on said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as an for attorney's fees, together with the further sum of Twenty-three and 80/100 Dollars (\$23.80) for costs herein incurred by the plaintiff; together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix, according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Now, therefore, public notice is hereby given, that I will on the 2nd day of February, 1932, at the hour of ten o'clock A.M. at the front door of the Court House in the City of Phoenix, Maricopa County, Arizona, sell to the highest bidder for cash in lawful money of the United States, all the right, title, claim and interest of the above named defendant, Hattie L. Mosher, in, of and to the above described real property.

Plaintiff's Exhibit No. 1—(Continued.)

Dated this 5th day of January, 1932.

J. R. McFADDEN,  
Sheriff

By C. L. WALMSLEY,  
Under Sheriff.

(Pub. January 7, 14, 21 and 28, Inc.)

Office of the Sheriff

County of Maricopa—ss.

I hereby certify that by virtue of an order issued out of the Superior Court of Maricopa County, Arizona, on the 14th day of March, 1932, setting aside the sale in the within entitled action held by me as Sheriff on the 2nd day of February, 1932, I herewith return the within Special Execution wholly unsatisfied.

Dated this 14th day of March, 1932.

J. R. McFADDEN,  
Sheriff.

By C. L. WALMSLEY,  
Under Sheriff.

Received: Jun. 5, 1932, 9:35.

J. R. McFADDEN,  
Sheriff.

[Title of Superior Court and Cause.]

#### MOTION TO SET ASIDE SALE

Comes now the defendant H. L. Mosher by attorney, and moves the Court to set aside and squash the pretended sale made by the sheriff herein on the

Plaintiff's Exhibit No. 1—(Continued.)  
special execution for the reason that the same having been held fully, if not more than ten days ago, and was bid in at a price in excess of the full sum due the plaintiff, including all costs and fees taxed and demanded, the purchase price bid has not been paid. That the sale was not made for CASH in hand as the law and the special execution provides.

Upon this motion defendant asks the judgment of the court.

JNO. W. RAY,  
John W. Ray,  
Attorney.

Receipt of copy of the within Motion is hereby acknowledged this 18th day of February, 1932.

HENRY J. SULLIVAN,  
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 18, 1932.

Entered by G. H. Austin.

In the Superior Court of Maricopa County, State  
of Arizona, Division No. 2

Court convened at 9:30 a.m., Monday, March 14,  
1932.

Present: Joseph S. Jenckes, Judge; Walter S. Wilson, Clerk; the Sheriff; the County Attorney; and the Court Reporter.

[Title of Cause.]

It is ordered by the court granting Defendant's Motion to Set Aside Sale.

Plaintiff's Exhibit No. 1—(Continued.)

[Title of Superior Court and Cause.]

SPECIAL EXECUTION

State of Arizona, to the Sheriff of Maricopa County,  
Arizona: Greeting:

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00) with interest thereon from the 28th day of June, 1931, at the rate of Eight (8) per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of Eight (8) per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars (\$12.00) expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty Dollars (\$250.00) as and for attorney's fees, together with the further sum of Twenty-three and 80/100 (\$23.80) Dollars for costs herein incurred by the plaintiff: together with the further sum of Two Thousand Nine Hundred and ninety-three and 30/100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with foreclosure of plaintiff's mortgage lien against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Plaintiff's Exhibit No. 1—(Continued.)

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State

and that said property, together with all the right, title, interest and claim which the defendant has or claims to have had be seized and sold as under execution by the Sheriff of Maricopa County, Arizona, in satisfaction of said judgment, and the proceeds of such sale, after the payment of costs and expenses thereof, be paid to the plaintiff or her attorney to be applied on and toward the satisfaction of such judgment;

Now therefore, you, the said Sheriff are hereby commanded that you proceed to seize and sell the premises and property hereinbefore described as under execution, together with all of the right, title, claim and interest which the defendant Hattie L. Mosher, had herein on the 28th day of March, 1928;

Herein fail not under penalty of law to make due return hereof showing that you have executed this return before this Court at the Court House in the City of Phoenix, Arizona, within Ninety (90) days after the receipt hereof.

Witness the Honorable Joseph S. Jenckes, Judge of the Superior Court of Maricopa County, Arizona, at the Court House of said County this 16th day of March, 1932.



Plaintiff's Exhibit No. 1—(Continued.)

Given under my hand and seal of office of said Court the day and year last above written.

[Court Seal.] WALTER S. WILSON,  
Clerk of the Superior Court.

By L. H. BUCK,  
Deputy

[Endorsed]: Filed Apr. 29, 1932.

State of Arizona

County of Maricopa—ss.

Under and by virtue of the foregoing Execution and Order of Sale, I, J. R. McFadden, Sheriff of Maricopa County, duly seized and levied upon all property described in said Execution and Order of Sale in the manner and form required by law. I duly noticed said property for sale in satisfaction of said judgment, as required by law, and the mandate of said writ, by causing the legal notice of sale to be published weekly for four consecutive weeks next before said sale, in the Tempe News a newspaper of general circulation, published in said County, and by posting three printed copies of said notice in said County, as required by law, one copy of said notice being posted at the door of the Court House of said County, all for twenty-one days next before said sale.

On the 12th day of April, 1932, at the hour of ten o'clock a.m., at the door of the Court House in said County, in the City of Phoenix, all of said property

Plaintiff's Exhibit No. 1—(Continued.)  
mentioned, set forth and fully described in said Execution and Order of Sale, was duly offered for sale at public auction, in satisfaction of said judgment, pursuant to said notice and said writ. And at said sale all of the said property so described therein was duly struck off and sold to Elsie B. Ganz, the said Plaintiff for the sum of Fourteen Thousand Nine Hundred Seventy-three and  $33/100$  Dollars, she being the highest bidder, and that being the highest sum bid, and said sum so bid and received being equal to the judgment and costs in this case, this Execution and Order of Sale is now returned wholly satisfied.

I have made and delivered to the said purchaser the legal certificate of sale, and have filed for record with the County Recorder of said County, a true copy or duplicate of said certificate.

The Receipt of plaintiff's attorney in full satisfaction of said judgment is attached hereto and made a part of this return.

Dated this 12th day of April, A. D. 1932.

J. R. McFADDEN,  
Sheriff

By C. L. WALMSLEY,  
Under Sheriff.

The State of Arizona,  
County of Maricopa—ss.

Received of J. R. McFadden, Sheriff of Maricopa County, Arizona, the sum of Fourteen Thousand Nine Hundred Seventy-three and  $33/100$  Dollars in

Plaintiff's Exhibit No. 1—(Continued.)

full payment and satisfaction of the judgment and costs in the foregoing Execution and Order of Sale, said sum being the amount bid and received for the property this day sold at Sheriff's sale in satisfaction of said judgment, and said sum so bid and received being evidenced and represented by the Certificate of Sale issued to the purchaser of said property, who is also the plaintiff in this case.

Dated this 12th day of April, A. D. 1932.

(Signed) HENRY J. SULLIVAN,  
Attorney for Plaintiff.

Judgment .....	\$11,000.00
Fore S. ....	12.00
Interest .....	\$ 610.23
Attorney's Fees .....	\$ 250.00
Taxes .....	\$ 2,993.30
Costs .....	\$ 23.80
Costs Accruing .....	\$ 84.00
Total .....	\$14,973.33
By Sale .....	\$14,973.33
Balance Due .....	\$ None

I, the undersigned, publisher of Tempe Daily News, a newspaper of general circulation printed and published at Tempe, Maricopa County, Arizona, do hereby certify and swear that the hereto annexed Sheriffs Notice of Sale No. 35462 Elsie B. Ganz vs. Hattie Mosher et al was duly published for the full period 4 consecutive weeks as required by law, in said Tempe Daily News: the first publication being in the issue dated March 19, 1932, the second publication in

Plaintiff's Exhibit No. 1—(Continued.)

the issue dated March 26, 1932, the third publication in the issue dated April 2, 1932, the fourth publication in the issue dated April 9, 1932, and the last publication being in the issue dated April 9, 1932.

CURT W. MILLER,

Publisher Tempe Daily News.

State of Arizona,

County of Maricopa—ss.

Subscribed and sworn to before me this 9th day of April, 1932.

[Seal]

W. J. KINGSBURY,

Notary Public.

My Commission expires June 4, 1932.

[Title of Superior Court and Cause.]

SHERIFF'S NOTICE OF SALE OF REAL  
PROPERTY ON SPECIAL EXECUTION

Under and by virtue of an Execution (Special) issued out of and under the seal of the Superior Court of Maricopa County, Arizona, on the 16th day of March, 1932, and to me as such Sheriff duly directed and delivered in the above entitled action;

Whereas, on the 26th day of December, 1931, the above named plaintiff recovered judgment in the Superior Court of the State of Arizona, in and for Maricopa County, in the above entitled action, against the defendant Hattie L. Mosher, for the principal sum of Eleven Thousand Dollars (\$11,000.00), with interest thereon from the 28th day of June,

Plaintiff's Exhibit No. 1—(Continued.)

1931, at the rate of eight per cent per annum on \$5000.00 of said sum, and with interest from the 1st day of September, 1931, at the rate of eight per cent per annum on \$6000.00 of said sum, until paid, together with the further sum of Twelve Dollars expended by the plaintiff for foreclosure search, together with the further sum of Two Hundred Fifty (\$250.00) Dollars as and for attorney's fees, together with the further sum of Twenty-three and 80-100 Dollars for costs herein incurred by the plaintiff, together with the further sum of Two Thousand Nine Hundred and Ninety - three and 30-100 (\$2993.30) Dollars expended by the plaintiff as and for State, County and City taxes; together with a foreclosure of plaintiff's mortgage lien as against said defendant Hattie L. Mosher upon those premises known and described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Now, therefore, public notice is hereby given that I will on the 12th day of April, 1932, at the hour of ten o'clock A.M., at the front door of the Court House in the City of Phoenix, Maricopa County, Arizona, sell to the highest bidder for cash in lawful money of the United States, all the right, title, claim and interest of the above named defendants, in, of and to the above described real property.



Plaintiff's Exhibit No. 1—(Continued.)

Dated this 16th day of March, 1932.

J. R. McFADDEN,

Sheriff

By C. L. WALMSLEY,

Under Sheriff.

Pub. dates, Mar. 19 and 26 and April 2 and 9, 1932.

Henry J. Sullivan

Attorney for Plaintiff

819 Title and Trust Bldg

Phoenix, Arizona

Received Mar. 16, 1932, 4:37. J. R. McFadden,  
Sheriff.

[Title of Superior Court and Cause.]

#### MOTION TO SET ASIDE SALE

Comes now the defendant, H. L. Mosher by attorney, and moves the Court to set aside the sale reported to have been made by the sheriff under a special execution on April 12th, 1932, for the reasons following:

Defendant shows the court that by the records and files in this case it appears that under the decree of foreclosure there was issued out of this court a special execution on January 5th, 1932, returnable within (90) ninety days, which would give the sheriff until April 5th, 1932, to do execution thereon; that there was an attempted sale made thereunder, which was for cause shown set aside on March 14th, 1932, leaving the special execution in the hands of the Sheriff in full force and virtue and with some time to run before return day fixed therein; that such

## Plaintiff's Exhibit No. 1—(Continued.)

special execution remained in the hands of the said sheriff and was returned by him and filed in the clerks office April 7th, 1932, as appears of record, wholly unsatisfied.

That on March 16th, 1932, and while the first special execution was still alive and in full force and in the hands of the sheriff unreturned and unexecuted there was issued on the direction of the plaintiff, a second special execution for the same sum and under the same decree of foreclosure which was placed in the hands of the sheriff on the date of issue, March 16th, 1932, and under that second special execution the sheriff advertised the property directed to be sold, and the same property directed to be sold under the first special execution then also in his hands for action, in a newspaper and by posters that he would under and by virtue of the said second special execution sell said property; that afterwards, under the commands of the said second execution and after he had made return of the first special execution, and on April 12th, 1932, the said sheriff acting under the direction of the plaintiff and by virtue of the second special execution, attempted to again sell the property, the plaintiff being the bidder thereof, at a price which was some twelve hundred dollars less than the same plaintiff bid at the first sale, which had been set aside. That the property so sold by the sheriff brought at the second sale, the one herein sought to be set aside and declared void, the total of (\$14,973.33) fourteen thousand nine hundred seventy-three and 33/100 dollars; that it is and was at the time of sale worth at least fifty thousand dollars, so

Plaintiff's Exhibit No. 1—(Continued.)

that the sale so made was for grossly inadequate sum, and as defendant is informed may have been caused by the question as to the legality of the sale under this special execution and legitimate bidders refrained from bidding at all, so that by the cloud cast on the sale, the property did not bring anything like its real value.

That on the second sale made April 12th, there was erroneously included in the sum to be realized the costs of advertising the first sale that had been by this court set aside, because the bidder thereat did not pay the amount of his bid; this sum amounted to twenty-six dollars, to the extent of which this defendant is not chargeable.

There is no statutory authority for the issuance of an alias or second or subsequent special execution in this state, nor in the decree rendered.

The premises considered, defendant prays the Court to set aside and declare as void the so-called sale made by the sheriff April 12th, 1932.

JOHN W. RAY,

By John W. Ray, attorney

MARSHALL W. HAISLIP

Cited: Stat. 4211; 4213; 4214. Corpus Juris Vol. 23, Executions sec. 166; 167; 168, page 392-3; Freeman Executions Sec. 49 1st Ed.

Rec'd copy this 3rd day of Sep. 1932.

H. J. SULLIVAN,

Atty. for deft.

[Endorsed]: Filed Sep. 3, 1932.

Plaintiff's Exhibit No. 1—(Continued.)  
In the Superior Court of Maricopa County,  
State of Arizona  
Division No. 2

Court convened at 9:30 A. M., Monday, September 26, 1932. Present: Joseph S. Jenckes, Judge; Walter S. Wilson, Clerk; the Sheriff, the County Attorney; and the Court Reporter.

[Title of Cause.]

It is ordered by the Court denying Motion to Set Aside Execution and Sale.

State of Arizona,  
County of Maricopa—ss.

I, Walter S. Wilson, Clerk of the Superior Court of Maricopa County, State of Arizona, hereby certify that I have compared the foregoing copies with originals

Complaint—Filed September 16, 1931.

Summons, and Return of Summons—Filed September 21, 1931.

Demurrer—Filed October 6, 1931.

Answer—Filed October 26, 1931.

Decree of Foreclosure—Filed January 5, 1932.

Special Execution & Return—Filed April 7, 1932.

Sheriff's Notice of Sale Under Special Execution—Filed April 7, 1932.

Motion to Set Aside Sale—Filed February 18, 1932. Minute Entry (Order granting Defendant's Motion to be set aside)

Special Execution and Return—Filed April 29, 1932.

Plaintiff's Exhibit No. 1—(Continued.)

Motion to Set Aside Sale—Filed September 3, 1932, and Minute Entry (Order denying Motion to Set aside Execution and sale,

filed in my office on the dates hereinabove stated, and that the same are true copies of the originals and of the whole thereof.

Witness my hand and the Seal of said Court, this 11th day of December, A. D. 1940.

[Seal]

WALTER S. WILSON,

Clerk of the Superior Court,  
Maricopa County, Arizona.

[Endorsed]: Filed Feb. 3, 1941, and Sept. 16, 1941.

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PLAINTIFFS' EXHIBIT No. 2

SHERIFF'S DEED

This Indenture, Made the 27th day of October, in the year of our Lord one thousand nine hundred and thirty two, between J. R. McFadden, Sheriff of the County of Maricopa, State of Arizona, the party of the first part, and Elsie B. Ganz, the party of the second part,

Witnesseth, Whereas, in and by a certain judgment and Decree made and entered by the Superior Court of Maricopa County, State of Arizona, on the 26th day of December, 1931, in a certain action then pending in said Court, wherein Elsie B. Ganz was Plaintiff and Hattie L. Mosher, County of Maricopa, a body politic, were defendants.



It was, among other things, ordered, adjudged and decreed that all and singular the mortgaged premises described in the complaint in said action, and specifically described in said judgment and decree should be sold at public auction by the Sheriff of the said County of Maricopa in the manner required by law.

And Whereas, in accordance with said judgment and decree, an order of sale was, on the 16th day of March, 1932, issued and delivered to the said Sheriff of the County of Maricopa commanding him to seize the premises described in said judgment, and decree and sell the same as under execution, and apply the proceeds of said sale toward the satisfaction of said judgment, and make return thereof within ninety days; and, whereas, pursuant to said order of sale to him directed and delivered, the said Sheriff of the County of Maricopa duly levied on the premises mentioned in said judgment and decree and hereinafter described and, agreeably to said judgment and decree and the provisions of law, did at the hour of ten o'clock A. M., on the 12th day of April, 1932, after due public notice had been given as required by the laws of this State and the course and practice of said Court, sell said premises at public auction at the door of the Court House in the city of Phoenix, in said County of Maricopa; at which sale the said premises mentioned in said judgment and decree, and hereinafter described, were fairly struck off to the said Elsie B. Ganz, the said party of the second part, for the sum of Four-

teen Thousand Nine Hundred Seventy-three and 33/100 Dollars she being the highest bidder, and that being the highest sum bid for the same.

And Whereas, the said party of the second part thereupon paid to the said Sheriff the said sum of money so bid by her.

And Whereas, the said Sheriff thereupon made and issued the usual certificate in duplicate of the said sale in due form of law, and delivered one thereof to the said purchaser and caused the other to be filed in the office of the County Recorder of said County of Maricopa.

And Whereas, more than six months have elapsed since the date of said sale, and no redemption has been made of the premises so sold as aforesaid, by or on behalf of the said judgment debtors, the said Hattie L. Mosher, et al, or by or on behalf of any other person. And no notice of intention to redeem having been given by any lien holder, creditor or other person entitled to redeem, as provided by law.

Now, This Indenture Witnesseth: That the said party of the first part, the said Sheriff, in order to carry into effect the sale so made by him aforesaid, in pursuance of said judgment and decree and in conformity to the Statute in such case made and provided, and also in consideration of the premises and of the said sum of Fourteen Thousand Nine Hundred Seventy-three and 33/100 (\$14,973.33) Dollars, lawful money of the U. S., so bid and paid by the said purchaser, the said party of the second part, the receipt of which is hereby acknowledged,

has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the said County of Maricopa, State of Arizona, bounded and particularly described as follows, to-wit:

Lot Two (2) in Block Three (3) in Churchill Addition to the said City of Phoenix according to the map or plat thereof on file and of record in the office of the County Recorder of said County and State.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the revision and revisions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold all and singular the said premises hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

In Witness Whereof, the said party of the first part of these presents has hereunto set his hand and seal the day and year first above written.

[Seal]

J. R. McFADDEN,

Sheriff of the County of  
Maricopa.

I. R. S.

\$15.00

Cancelled.

State of Arizona

County of Maricopa—ss.

On the 27th day of October, 1932, personally appeared before me, the undersigned authority the within-named J. R. McFadden, Sheriff of the County of Maricopa, State of Arizona, known to me to be the person described in and whose name is subscribed to the within instrument, and he, the said J. R. McFadden, acknowledged to me that he, as such Sheriff of said County, executed the same for the uses, purposes and considerations therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal of Office at my office in the County of Maricopa, State of Arizona, the day and year in this Certificate first above written.

[Seal]

C. L. WALMSLEY,

Notary Public in and for the  
County of Maricopa, Arizona.

My commission expires December 23, 1934.

Filed and recorded at request of Harry Sullivan,  
Dec. 15 at 10:04 AM 1932.

W. H. LINVILLE,

County Recorder.

By K. P. MAUZY,

#28605

Deputy.





by these presents does grant, sell and convey unto the said Grantee all that certain real property situate in the County of Maricopa, State of Arizona, described as follows:

Lot Two (2), Block Three (3), Churchill Addition, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 2 of Maps, page 69 thereof.

To Have and to Hold the above described property, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Grantee, his heirs and assigns forever. And the Grantor hereby binds herself, her heirs, executors and administrators, to warrant and defend, all and singular, the said property unto the said Grantee, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the following exceptions—

To all State of Arizona, County of Maricopa and City of Phoenix real and personal property taxes, but the Grantor herein specifically warrants against any personal property taxes of the Grantor.

Street Paving Lien of the City of Phoenix, for the principal sum of \$35.96 Under Bond Act of 1919, levied for Street Improvements, Bonded June 30, 1931, Assessment #2, payable in ten annual installments on the first day of December of each year, commencing December 1, 1931, bearing interest at the rate of 6% per annum on all deferred payments,

payable semi-annually on the first day of June and December of each year. All installments of principal and interest paid to and including December 1, 1933, as evidenced by the record in the office of the Treasurer of said City of Phoenix, in Volume 238, Sheet 2 thereof.

The rights of O'Connell Brothers, Inc., a corporation of Arizona, under the terms of that certain Lease dated September 17, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, Inc., a corporation of Arizona, Term of Five Years from October 1, 1931, recorded September 19, 1931 in Book 11 of Leases, page 326, records of Maricopa County, Arizona.

Judgment against Hattie L. Mosher, in favor of Salt River Valley Water Users' Association, for \$297.07 and \$16.80, docketed May 21, 1930, in Cause #28506, Kibbey, Bennett, Gust, Smith and Rosenfeld, Attorneys for Judgment Creditor, April 21, 1932, filed Mandate Supreme Court affirming Judgment, Mandate redocketed April 21, 1931. This Judgment partially satisfied to extent of \$150.00, January 31, 1934. Sloan, McKesson and Scott.

Witness my hand and seal this 1st day of May, 1934.

[Seal]

ELSIE B. GANZ.

State of Arizona,  
County of Maricopa—ss.

Before me, Marion E. Jacques, a Notary Public, in and for the County of Maricopa, State of Arizona,

on this day personally appeared Elsie B. Ganz, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 1st day of May, 1934.

[Seal]

MARION E. JACQUES,

Notary Public.

My commission expires July 18, 1934.

[Endorsed]: Filed Feb. 3, 1941 and Sep. 16, 1941.

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PLAINTIFF'S EXHIBIT No. 4

REALTY MORTGAGE

Know All Men, That Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, party of the first part, in consideration of Nine thousand (\$9,000.00) Dollars, in hand paid by J. Gerard, of Phoenix, Arizona, party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said party of the second part, her heirs and assigns forever, the following real estate, lying and being in the County of Maricopa and State of Arizona, and known and described as:

Lots one (1) and two (2), Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of

Plaintiff's Exhibit No. 4—(Continued.)

record in the office of the Recorder of Maricopa County, Arizona. Together with all the privileges and appurtenances to the same belonging.

To Have and To Hold the same to the said party of the second part, her heirs and assigns forever.

And the said Greene & Griffin Real Estate and Investment Company, party of the first part, hereby covenant that it is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and has good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that it will forever warrant and defend the same to the party of the second part, her heirs and assigns, against all claims whatsoever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, its successors and assigns shall pay or cause to be paid to the said party of the second part, her heirs, executors, administrators or assigns, the just and full sum of Nine Thousand (\$9000.00), according to the conditions of one certain promissory note bearing even date herewith, executed by the said Greene & Griffin Real Estate and Investment Company, party of the first part, to the said party of the second part, and shall moreover pay annually to the proper officers all taxes, which shall be assessed on the said real estate, on or before the date upon which such taxes shall have become delinquent, and insure and keep insured the buildings thereon against loss or damage by fire in the sum

## Plaintiff's Exhibit No. 4—(Continued.)

of ..... dollars or over in insurance companies to be selected by the said party of the second part, her heirs or assigns, and the policy or policies of such insurance to be payable to the mortgagee as her interest may appear, and in default thereof it shall be lawful for the said party of the second part, her heirs or assigns, to effect such insurance, and the premium and premiums and other legal expenses, fees, costs and charges paid for effecting the same, together with interest thereon at *th* rate of twelve (12) per cent per annum, shall be a lien upon the said mortgages premises, added to the amount of the said note and secured by these presents until the payment of said note, then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, or in case of the failure on the part of said party of the first part to keep or perform any other agreement, stipulation or condition herein contained, or contained in the note above described, then in such case the whole amount of the said principal sum shall, at the option of the said party of the second part, her representatives or assigns, be deemed to have become due, and the same with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made



## Plaintiff's Exhibit No. 4—(Continued.)

payable at the time when such failure shall occur as aforesaid; and it shall be lawful in such case for said party of the second part, her heirs, executors, administrators or assigns, to grant, sell and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue, after giving thirty days' notice of the time and place of such sale by publishing the same in a newspaper published within the county where the mortgaged premises are situated; and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, good and sufficient deeds of conveyance in the law, conveying to such purchaser or purchasers all the title, interest and estate of the mortgagors in and to said lands and premises, without redemption; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said note, together with all costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, its successors and assigns, after deducting the costs of such vendue as aforesaid; and in case of the foreclosure of this mortgage by suit, the plaintiff in the action shall be entitled to the appointment of a receiver of said mortgaged property, without bonds to take possession of the same and collect the rents and profits thereof, pending foreclosure proceedings; and in case of foreclosure by suit or public sale, the said party of the first part, for itself, its representatives or assigns, does covenant and agree that it will pay to the said party of the second part,

Plaintiff's Exhibit No. 4—(Continued.)

her representatives or assigns, in addition to the taxable costs in the foreclosure suit, Nine hundred (\$900.00) dollars attorney fees.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its President, and its corporate seal affixed, attested by its Secretary this 24th day of February, A. D., 1913.

[Corporate Seal]

GREENE & GRIFFIN REAL  
ESTATE AND INVEST-  
MENT CO.

By R. H. GREENE,  
Its President.

Attested by:

J. F. TRACY,  
Its Secretary.

State of Arizona,  
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, Arizona State, on this day personally appeared R. H. Green and J. F. Tracy, known to me to be the persons whose names are subscribed to the foregoing instrument as President and Secretary of the Corporation described in the foregoing instrument, and as such President and Secretary acknowledged to me that they executed the same for said Corporation for the purpose and consideration therein expressed, as its free act and



## Plaintiff's Exhibit No. 4—(Continued.)

For Assignment of this Mortgage see Book 8 of Assignment of Mortgages, page 372.

For Assignment of this Mortgage see Book 12 of Assignment of Mortgages, page 388.

For Extension of this Mortgage see Book 114 of Mortgages, page 361.

For Extension of this Mortgage see Book 191 of Mortgages, page 208.

For Partial Release of this Mortgage see Book 21 of Release of Mortgages, page 101.

## EXTENSION OF REALTY MORTGAGE

Memoranda of Agreement between J. Gerard, whose full name is Josephine Gerard, a widow, and Hattie L. Mosher, a widow, both of Phoenix, Arizona. Witnesseth: Whereas, on the 24th day of February, 1913, the Greene and Griffin Real Estate and Investment Company executed a certain promissory note for Nine Thousand Dollars (\$9,000.00) of even date therewith, as follows:

Phoenix, Arizona, Feb. 24th, 1913. No.

On or before, three (3) years after date, without grace, for value received, Greene & Griffin R. E. and Inv. Co. promise to pay to J. Gerard, of Phoenix, Ariz., or order, the sum of Nine Thousand (\$9,000.00) Dollars, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid semi-annually, then

Plaintiff's Exhibit No. 4—(Continued.)

the whole sum of principal, and interest, shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note Greene & Griffin R. E. & I. Co. promise to pay as attorney's fees \$900.00 additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at Phoenix, Arizona.

\$1000.00 or more may be paid on the principal of this note at any time.

\$9000.00 due February 24th, 1916.

GREENE & GRIFFIN REAL  
ESTATE AND INVEST-  
MENT COMPANY.

R. H. GREENE,

Prest.

J. F. TRACY,

Secy.

and secured the same by a mortgage on the following described real estate, to-wit:

Lots One (1) and Two (2) in Block Three (3) of Churchill's Addition to the City of Phoenix, as per map, or plat of said addition on file and of record in the office of the County Recorder of Maricopa County, State of Arizona, which said mortgage was recorded in the office of the said County Recorder in Book 85 of Mortgages, at pages 303 and 304, on May 29th, 1913, at the request of the said Josephine Gerard:

And whereas, said Greene & Griffin Real Estate and Investment Company, on the First day of July,



Plaintiff's Exhibit No. 4—(Continued.)

1914, sold, and by Warranty Deed conveyed said real estate to the said Hattie L. Mosher subject to said mortgage, and paving lien on Lot One (1) amounting to \$600.06, and paving lien on Lot Two (2) amounting to \$426.89, which said deed was recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 110 of Deeds, at page 179 on July 9th, 1914;

And whereas, said promissory note has not been paid, and the said J. Gerard, mortgagee and holder of the said note agrees to extend the time of payment thereon up to, and until, the 24th day of February, 1928;

Now, Therefore, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon upon the said 24th day of February, 1928.

In Witness Whereof, the parties hereto have hereunto set their hands, and seals, at Phoenix, Arizona, this 7th day of October, 1918.

J. GERARD.

HATTIE L. MOSHER.

State of Arizona -  
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa State of Arizona, on this day personally appeared J. Gerard, whose full name is Josephine Gerard and Hattie L. Mosher, known to me to be the persons whose names are subscribed to the foregoing instrument, and

Plaintiff's Exhibit No. 4—(Continued.)

acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, 1919.

[Seal]                      J. B. WOODWARD,  
Notary Public.

My commission expires February 16th, 1920.

Filed and recorded at request of Hattie L. Mosher Oct. 9, 1919, at 3:15 P.M. in Book 114 of Mortgages, page 361-2. Fee #17365.

EDITH M. JACOBS,  
County Recorder  
By G. H. BOEHM,  
Deputy.

### ASSIGNMENT OF MORTGAGE

Know All Men by These Presents:

That I, J. Gerard, whose full name is Josephine Gerard, widow, the party of the first part, for and in consideration of the sum of Nine Thousand Dollars, (\$9,000.00) to me in hand paid by Julia Mosher-Collins, the party of the second part, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the 24th day of February, one thousand nine hundred and thirteen, made and executed by The Greene and Griffin Real Estate and Investment Company, to J. Gerard, (whose full name is Josephine Gerard) together with the note in said mortgage described,

Plaintiff's Exhibit No. 4—(Continued.)

and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest, and in case of a payment to discharge the same as fully as the said party of the 1st part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents the 7th day of October, A.D., 1919.

J. GERARD.

State of Arizona

County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa State of Arizona, on this day personally appeared J. Gerard, whose full name if Josephine Gerard known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she

Plaintiff's Exhibit No. 4—(Continued.)

executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, A.D., 1919.

[Seal]                      J. B. WOODWARD,  
Notary Public.

My Commission expires February 16th, 1919.

Filed and recorded at the request of H. L. Mosher, Nov. 8, 1919, at 11:55 A.M. in Book 7 of Assignment of Mortgages, page 159. Fee #19265.

EDITH M. JACOBS,  
County Recorder

By G. H. BOEHM,  
Deputy.

### ASSIGNMENT OF MORTGAGE

Know All Men by These Presents:

That I, Julia Mosher-Collins, married, the party of the first part, for and in consideration of the sum of Nine Thousand Dollars, (\$9,000.00) Dollars, to me in hand paid by my husband, James Dean Collins, commonly known as "Dean Collins" the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage bearing date the 24th day of February one thousand nine hundred & Thirteen (13) made and executed by The Greene and Griffin Real Estate and Investment Company to J. Gerard, (whose full name is Josephine Gerard). Together with the note

Plaintiff's Exhibit No. 4—(Continued.)

in said mortgage described, and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the Note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents, the First (1st) day of March, A.D., 1920.

JULIA MOSHER-  
COLLINS.

By HATTIE L. MOSHER,  
Her Attorney-in-Fact.

State of Arizona,  
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared Hattie L. Mosher known to me to be the person whose name is sub-



Plaintiff's Exhibit No. 4—(Continued.)

scribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this First day of March, A.D., 1920.

[Seal]                      J. B. WOODWARD,

Notary Public.

(My commission expires February 16th, 1924)

Filed and recorded at request of Hattie Mosher, Apr. 18, 1921, at 1:11 P.M., in Book 8 of Assignment of Mortgages, page 372-3. Fee #7637.

EDITH M. JACOBS,

County Recorder

By WALTER W. SMITH,

Deputy.

POWER OF ATTORNEY

GENERAL

Know All Men by These Presents: That I Julia Winifred Mosher Collins, formerly and until September 16th, 1914, Julia Winifred Mosher have made, constituted and appointed, and by these presents do hereby make, constitute and appoint Hattie Lount Mosher my true and lawful Attorney for me and in my name, place and stead, for my use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me; and have, use and take all lawful ways or

## Plaintiff's Exhibit No. 4—(Continued.)

means in my name, or otherwise, for the recovery thereof, by legal process, and to compromise and agree for the same, and grant acquittance or other sufficient discharges for the same for me and in my name, to make, seal and deliver; to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizing and possessing of all lands, and all deeds and other assurances in the law thereof; and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, hereditaments, upon such terms and conditions and under such covenants as she shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choses in action, and other property in possession or in action; and to make, do and transact all and every kind of business or what nature and kind soever; and, also, for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter bills of lading, bills bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises.

Giving and Granting unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and neces-

Plaintiff's Exhibit No. 4—(Continued.)

sary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof hereby ratifying and confirming all that my said Attorney Hattie Lount Mosher shall lawfully do or cause to be done by virtue of these presents:

In Witness Whereof, I have hereunto set my hand, this 20th day of July, one thousand nine hundred and fifteen.

JULIA WINIFRED MOSHER  
COLLINS.

Signed, Sealed and delivered in the *present* of  
Edgar B. Piper.

W. E. Hartmus.           25c I.R.S. Cancelled.

Helen Milbourn.

State of Oregon,  
County of Multnomah—ss.

Before me, W. E. Hartmus, a Notary Public in and for the County of Multnomah, State of Oregon, on this day personally appeared Julia Winifred Mosher Collins known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 20th day of July, A.D., 1915.

[Seal]                   W. E. HARTMUS,  
Notary Public.

(My Commission expires May 25, 1919)

Filed and recorded at request of Hattie L.

Plaintiff's Exhibit No. 4—(Continued.)

Mosher, Apr. 2, 1921, at 11:57 A.M. in Book 5 of Power of Attorneys, page 141-2. Fee #6652.

EDITH M. JACOBS,  
County Recorder  
By WALTER W. SMITH,  
Deputy.

PARTIAL SATISFACTION OF MORTGAGE  
Know All Men by These Presents:

That the Mortgage executed by Greene & Griffin Real Estate and Investment Company, a corporation, of Phoenix, Arizona, the party of the first part therein, to J. Gerard, of Phoenix, Arizona, a widow, the party of the second part therein, bearing date the 24th day of February, 1913, and recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book 85 of Mortgages, at pages 303 and 304, on the 29th day of May, 1913, together with the debt thereby secured is as to Lot Two (2) in Block Three (3) fully paid, satisfied and discharged, and is retained on Lot One (1), Block Three (3).

In Witness Whereof, I have hereunto set my hand and seal this 11th day of April, 1921.

JAMES DEAN COLLINS.

Signed and delivered in the presence of  
W. E. Critchlow.

Harry B. Critchlow.

State of Oregon

County of Multnomah—ss.

Before me, W. E. Critchlow, a Notary Public in and for the County of Multnomah, State of Oregon,

Plaintiff's Exhibit No. 4—(Continued.)

on this day personally appeared James Dean Collins known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 11th day of April, A.D., 1921.

[Seal]                      W. E. CRITCHLOW,  
Notary Public.

(My Commission expires Jan. 16, 1925).

Filed and recorded at request of Hattie Mosher, Apr. 18, 1921, at 1:12 P.M. in Book 21 of Releases of Mortgages, page 101. Fee #7638.

EDITH M. JACOBS,  
County Recorder  
By WALTER W. SMITH,  
Deputy.

### EXTENSION OF MORTGAGE

Memorandum of Agreement, Between James Dean Collins, (commonly known as Dean Collins), a widower, and Hattie L. Mosher, a widow.

Witnesseth: Whereas, on the Twenty-Fourth day of February, A.D., 1913, Greene and Griffin Real Estate and Investment Company, an Arizona corporation, executed a certain Promissory Note for Nine Thousand and No/100 dollars, payable on or before February 24, A.D., 1916, and secured by Mortgage on the following described real estate, to-wit:

Lots 1 and 2, Block 3, Churchill's Addition, an



Plaintiff's Exhibit No. 4—(Continued.)

Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, page 15 thereof;

It is understood, however, that Lot 2 of said Block 3, Churchill's Addition has heretofore been released from the lien of the above referred to Mortgage by Partial Release recorded in Book 21 of Releases, page 101, Records of Maricopa County Arizona;

which said mortgage was recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 85 of Mortgages, pages 303-4; and thereafter on October 7, 1918, extended by J. Gerard, a widow, to Hattie L. Mosher by Extension of Mortgage recorded on October 9, 1919, in Book 114 of Mortgages, page 361, records of Maricopa County, Arizona.

And Whereas, said Promissory note has not been paid, and the said James Dean Collins (commonly known as Dean Collins), a widower, agrees to extend the time of the payment thereof, up to and until the Thirty-First day of March, A.D., 1929.

Now Therefore, in consideration of such extension, the said Hattie L. Mosher agrees to pay said Promissory Note, with the specified rate of interest thereon, upon the said Thirty-First day of March, A.D., 1929, and if paid before said date that she will pay to said James Dean Collins (commonly known as Dean Collins), a widower the interest in full upon said Promissory Note at the rate therein

Plaintiff's Exhibit No. 4—(Continued.)  
specified, up to and including said Thirty-First day  
of March, A.D., 1929.

In Witness Whereof, the parties hereto have  
signed these presents this Thirty-First day of  
March, A.D., 1926.

JAMES DEAN COLLINS.

HATTIE L. MOSHER.

State of Arizona  
County of Maricopa—ss.

Before me, J. J. Barkley, a Notary Public in and  
for the County of Maricopa, State of Arizona, on  
this day personally appeared Hattie L. Mosher, a  
widow known to me to be the person whose name  
is subscribed to the foregoing instrument, and ac-  
knowledged to me that she executed the same for  
the purposes and consideration therein expressed.

My commission will expire July 14, 1926.

Given under my hand and seal of office this First  
day of April, A.D., 1926.

[Seal]                      J. J. BARKLEY,  
Notary Public.

State of Oregon  
County of Multnomah—ss.

Before me, Alexander Hamilton, a Notary Public  
in and for the County of Marion, State of Oregon,  
on this day personally appeared James Dean Col-  
lins (commonly known as Dean Collins), a widower,  
known to me to be the person whose name is sub-  
scribed to the foregoing instrument, and acknowl-



Plaintiff's Exhibit No. 4—(Continued.)

Lots 1 and 2, Block 3, Churchill's Addition, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, page 15 thereof;

which said Mortgage was recorded on the Twenty-ninth day of May A.D., 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303-4 in the office of the County Recorder of said County; and thereafter assigned by J. Gerard to Julia Mosher-Collins by Assignment dated October 7, 1919, and recorded on November 8, 1919, in Book 7 of Assignments, page 159; and thereafter assigned by Julia Mosher-Collins To James Dean Collins, (Commonly known as Dean Collins) by Assignment dated March 1, 1920, and recorded in Book 8 of Assignments, page 372; Records of Maricopa County, Arizona.

It is understood, however, that Lot 2 of said Block 3, Churchill's Addition has heretofore been released from the lien of the above referred to Mortgage by Partial Release dated April 11, 1921, and recorded in Book 21 of Releases, page 101, Records of Maricopa County, Arizona. Together with the obligation therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name, or otherwise, but at the proper costs and charges of the said party of the second

Plaintiff's Exhibit No. 4—(Continued.)

part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as full as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part has signed these presents, the Thirty-first day of March, A.D., 1926.

JAMES DEAN COLLINS.

State of Oregon,  
County of Multnomah—ss.

Before me, Alexander Hamilton, a Notary Public in and for the County of Marion, State of Oregon, on this day personally appeared James Dean Collins (Commonly known as Dean Collins), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

My Commission will expire March 25/1928.

Given under my hand and seal of office, this 8th day of April, A.D., 1926.

[Seal]                   ALEXANDER HAMILTON,  
Notary Public.

Filed and recorded at request of A. B. C. Davenport, April 13, 1926, at 4:20 P.M. in Book 12 of Assignments, page 388. Fee #9891.

W. H. LINVILLE,  
County Recorder  
By WALTER W. SMITH,  
Deputy



Plaintiff's Exhibit No. 4—(Continued)

State of Arizona

County of Maricopa—ss.

I, Roger G. Laveen, County Recorder in and for the County and State aforesaid, hereby certify that I have compared the foregoing copies with the record of same in County Recorder's Office, and that the same are full, true and correct copies of such records and of the whole thereof:

Realty Mortgage from Greene & Griffin Real Estate and Investment Company, to J. Gerard, recorded May 29, 1913, in Book No 85 of Realty Mortgages, pages 303-4:

Extension of Realty Mortgage between J. Gerard or Josephine Gerard and Hattie L. Mosher, recorded Oct. 9, 1919, in Book No 114 of Realty Mortgages, pages 361-2:

Assignment of Mortgage from J. Gerard to Julia Mosher-Collins recorded Nov. 8, 1919, in Book No 7 of Assignment of Mortgages, page 159:

Assignment of Mortgage from Julia Mosher-Collins to James Dean Collins, recorded Apr. 18, 1921, in Book No 8 of Assignment of Mortgages, pages 372-3:

Power of Attorney General from Julia Winifred Mosher Collins to Hattie Lount Mosher recorded Apr 2, 1921, in Book No 5 of Power of Attorneys, pages 141-2:

Partial Satisfaction of Mortgage from Greene & Griffin Real Estate and Investment Company, to J. Gerard, recorded Apr. 18, 1921, in Book No 21 of Releases of Mortgages, page 101:

## Plaintiff's Exhibit No. 4—(Continued)

Extension of Mortgage between James Dean Collins, and Hattie L. Mosher, recorded April 13, 1926, in Book No 191 of Realty Mortgages, page 208:

Assignment of Mortgage from James Dean Collins to A. B. C. Davenport, recorded April 13, 1926, in Book No 12 of Assignments, page 388: and that the same are a full, true and correct copies of same and of the whole thereof.

Witness my hand and seal of office this 13th day of December. 1940

[Seal]                    ROGER G. LAVEEN,  
                                  County Recorder  
By MARIE RISSER  
                                  Deputy

[Endorsed]: Filed Feb. 3, 1941 and Sep. 16, 1941.

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DEFENDANT'S EXHIBIT A  
CERTIFICATE

State of Arizona,  
County of Maricopa—ss.

I, Roger G. Laveen, Recorder of Maricopa County, State of Arizona, do hereby certify that the pages in this folio, numbered from "Page 1-A" to "Page 28-L", inclusive, and attached hereto, are full, true and correct copies of those Twelve (12) certain instruments set forth herein; which are recorded, and on file in the Office of the Recorder of Maricopa County, Arizona; and of the whole there-

Defendant's Exhibit A—(Continued.)

of, and are inscribed in the Books, and on the Pages, as follows, to-wit:

	Page in Folio;
A—Deed from Stroud to J. Gerard, Recorded November 29, 1907, in Book 78 of Deeds, on Page 318 .....	1
B—Resolution of Greene & Griffin Real Estate and Investment Company, in Book 13 of Miscellaneous, on Page 206 .....	3
C—Deed from J. Gerard to Greene, Recorded March 1, 1913, in Book 102 of Deeds, on Page 290 .....	5
D—Mortgage from Greene & Griffin to J. Gerard, Recorded May 29, 1913, in Book 85 of Mortgages, on Page 303 .....	6
E—Deed from Greene & Griffin to Hattie L. Mosher, Recorded July 9, 1914, in Book 110 of Deeds, on Page 179.....	11
F—Extension of Mortgage by Gerard and Mosher, Recorded October 9, 1919 (Executed October 7, 1918), in Book 114 of Mortgages, on Page 361 .....	13
G—Assignment of Mortgage, Recorded November 8, 1919, in Book 7 of Assignments, on Page 159 .....	16
H—Affidavit of J. B. Woodward, Recorded April 18, 1921, at 1:10 P. M. in Book 23 of Miscellaneous, on Page 278 .....	18
I—Lease from Hattie L. Mosher to O'Connell Brothers, Incorporated. Recorded Sep-	

Defendant's Exhibit A—(Continued.)	
tember 19, 1931, in Book 11 of Leases, on Page 326 .....	19
J—Transcript of Judgment in Equity 319, Re- corded January 20, 1937, at 4:47 P. M. in Book 1 of Judgments, Page 288.....	22
K—Certificate of Sale by Special Master, Re- corded March 31, 1939, in Book 57 of Miscellaneous, Page 549 .....	23
L—Deed of Special Master to Julia C. Collins, of Lots 1 and 2, in Block 3, Churchill Ad- dition, Recorded October 2, 1939, in Book 337 of Deeds, on Page 148 .....	25

In Witness Whereof, I have hereunto set my  
hand and affixed my Official Seal January 31, 1941.

[Seal]

ROGER G. LAVEEN,

Recorder of Maricopa County,  
State of Arizona.

By VIRGIL KING,

Deputy Recorder.

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### WARRANTY DEED

Territory of Arizona,  
County of Maricopa—ss.

Know All Men By These Presents: That Alice  
Maud Stroud and H. E. Stroud, her husband of the  
County of Los Angeles and State of California for  
and in consideration of Thirty-Five Hundred Dol-  
lars, to them in hand paid by J. Gerard, a single  
woman of the County of Maricopa and Territory of  
Arizona, have granted, sold and conveyed, and by

Defendant's Exhibit A—(Continued.)

these presents do grant, sell and convey unto the said J. Gerard all that certain premises described as follows, viz:

All of lots numbered one and two in block numbered three in Churchill Addition to the City of Phoenix in the County of Maricopa and Territory of Arizona, as per map or plat of said Churchill Addition on file and of record in the office of the County Recorder of Maricopa County, Arizona, together with pro rata water right in the Salt River Valley Canal Company attached to said land.

To Have and to Hold, the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said J. Gerard, her heirs and assigns forever;

And we hereby bind ourselves our heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said J. Gerard, her heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Witness our hands this.....day of November, 1907.

[Seal] ALICE MAUD STROUD

[Seal] H. E. STROUD

Signed, sealed and delivered in the presence of

.....  
.....  
.....





Defendant's Exhibit A—(Continued.)

Filed and recorded at request of Mrs. J. Gerard,  
Nov. 29, 1907 at 10:47 A. M.

C. F. LEONARD,  
County Recorder.

By V. L. VAUGHN,  
Deputy.

#7853

Know All Men By These Presents, that at a meeting of the Board of Directors of the Greene & Griffin Real Estate & Investment Company, a corporation of Phoenix, Arizona, held at the office of the company in the City of Phoenix, Arizona, on the 28th day of January, 1909, duly and regularly called and held, the following resolution was duly and unanimously adopted:

Resolved, that the president and vice-president of the corporation, or either of them, be and they are hereby authorized to sell, transfer and convey or mortgage, any and all real or personal property of this corporation, upon such terms and conditions as they may deem to the best interests of the corporation.

Resolved, Further, that the president and the vice-president of this corporation, or either of them, are hereby authorized and empowered to make, execute and deliver for and in behalf of this corporation, all deeds and mortgages, of and upon the property now *now* owned by this corporation, or which it may hereafter acquire, also execute assignments of mortgage, also satisfy and discharge any and all mortgages when they have been paid; and that such execution of such instruments by the

## Defendant's Exhibit A—(Continued.)

president and vice-president, or either of them, duly attested by the secretary with the seal of the corporation affixed thereto, shall be binding upon and shall be taken as the due execution of such instrument on the part of the corporation; that the president and vice-president of this corporation, or either of them, be and they are hereby authorized to satisfy and discharge on the records of the County Recorder's office of Maricopa County, Arizona, any and all mortgages, when same shall have been paid, and the said satisfaction shall have the same force and effect as though made in writing, signed by the president or vice-president, and attested by the secretary of this corporation under its corporate seal.

Be It Further Resolved, that all mortgages and deeds heretofore executed, by the president and vice president of this corporation, or either of them, and attested by the secretary thereof, with the corporate seal affixed, be and they are hereby ratified and confirmed as the act and deed of this corporation and binding upon it, the same as if this resolution were adopted prior to the execution of such instrument.

Witness my hand this 28th day of January, 1909.  
[Corporate Seal]

L. S. THOMPSON,

Secretary of the Greene &  
Griffin Real Estate and  
Investment Company.

Defendant's Exhibit A—(Continued.)

Territory of Arizona,  
County of Maricopa—ss.

Before me, H. W. Berryman, a Notary Public in and for the County and territory aforesaid, on this day personally appeared L. S. Thompson, known to me to be the person whose name is subscribed to the foregoing instrument, as the Secretary of the said Greene & Griffin Real Estate and Investment Company, and he as such secretary, acknowledged to me that he executed said instrument for the purpose and consideration therein expressed as its free act and deed and by him voluntarily executed.

Given under my hand and seal this 28th day of January, A. D. 1909.

[Notarial Seal]

H. W. BERRYMAN,  
Notary Public.

My commission expires the 7th day of July, 1912.

Filed and recorded at request of R. H. Greene  
Feb. 6, 1909, at 4:41 P. M.

C. F. LEONARD,  
County Recorder.

# 1009

WARRANTY DEED

State of Arizona,  
County of Maricopa—ss.

Know All Men By These Presents:

That J. Gerard, a widow since March 9th, 1900, of the City of Phoenix, Arizona for and in consideration of Ten (\$10.00) Dollars, to her in hand paid by Greene & Griffin Real Estate and Investment

Defendant's Exhibit A—(Continued.)

Company a Corporation of Phoenix, Arizona has granted, sold and conveyed, and by these presents does grant, sell and convey unto the said Greene & Griffin Real Estate and Investment Company all that certain premises described as follows, viz:

Lots one (1) and two (2) in Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per Map or plat of said Addition on file and of record in the office of the Recorder of Maricopa County, Arizona

To Have and to Hold, the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Greene & Griffin Real Estate and Investment Company, its successors and assigns forever. And she hereby binds herself her heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said Greene & Griffin Real Estate and Investment Company its Successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof except for taxes for the year 1913.

Witness my hand this 24th day of February A.D. 1913.

[Seal]

MRS. J. GERARD.

Signed, sealed and delivered in the presence of

[Seal]

.....

[Seal]

.....

[Seal]

.....





## Defendant's Exhibit A—(Continued.)

J. Gerard, of Phoenix, Arizona, party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to the said party of the second part, her heirs and assigns forever, the following real estate, lying and being in the County of Maricopa and State of Arizona, and known and described as:

Lots one (1) and two (2), Block three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona.

Together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said party of the second part, her heirs and assigns forever.

And the said Greene & Griffin Real Estate and Investment Company, party of the first part, hereby covenant that it is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple and has good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that it will forever warrant and defend the same to the party of the second part, her heirs and assigns, against all claims whatsoever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, its successors and assigns shall pay or cause to be paid to the said party of the second part, her heirs, executors, administrators or assigns, the just

Defendant's Exhibit A—(Continued.)  
and full sum of Nine Thousand (\$9,000.00) Dollars, according to the conditions of one certain promissory note bearing even date herewith, executed by the said Greene & Griffin Real Estate and Investment Company, party of the first part, to the said party of the second part, and shall moreover pay annually to the proper officers all taxes, which shall be assessed on the said real estate on or before the date upon which such taxes shall have become delinquent, and insure and keep insured the buildings thereon against loss or damage by fire in the sum of . . . . . dollars or over in insurance companies to be selected by the said party of the second part, her heirs or assigns, and the policy or policies of such insurance to be payable to the mortgagee as her interest may appear, and in default thereof it shall be lawful for the said party of the second part, her heirs or assigns, to effect such insurance, and the premium and premiums and other legal expenses, fees, costs and charges paid for effecting the same, together with interest thereon at *th* rate of twelve (12) per cent per annum, shall be a lien upon the said mortgaged premises, added to the amount of the said note and secured by these presents until the payment of said note, then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, or in case of the failure on the part of said party of the first part to keep or perform any

## Defendant's Exhibit A (Continued)

other agreement, stipulation or condition herein contained, or contained in the note above described, then in such case the whole amount of the said principle sum shall, at the option of the said party of the second part, her representatives or assigns, be deemed to have become due, and the same with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid; and it shall be lawful in such case for said party of the second part, her heirs, executors, administrators or assigns, to grant, sell and convey the said real estate, with the appurtenances thereunto belonging, at public auction or vendue, after giving thirty days notice of the time and place of such sale, by publishing the same in a newspaper published within the county where the mortgaged premises are situated; and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, good and sufficient deeds of conveyance in the law, conveying to such purchaser or purchasers all the title, interest and estate of the mortgagors in and to said land and premises, without redemption; and out of the moneys arising from such sale, to retain the principal and interest which shall then be due on the said note, together with all costs and charges, rendering the surplus moneys, if any there be, to the said party of the first part, its successors and assigns, after deducting the costs of such vendue as afore-

Defendant's Exhibit A (Continued)

said; and in case of the foreclosure of this mortgage by suit, the plaintiff in the action shall be entitled to the appointment of a receiver of said mortgaged property, without bonds to take possession of the same and collect the rents and profits thereof, pending foreclosure proceedings; and in case of foreclosure by suit or public sale, the said party of the first part, for itself, its representatives or assigns, does covenant and agree that it will pay to the said party of the second part, her representatives or assigns, in addition to the taxable costs in the foreclosure suit Nine hundred (\$900) dollars attorneys fees.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its president, and its corporate seal affixed, attested by its Secretary this 24th day of February A. D. 1913.

(Corporate Seal)

GREENE & GRIFFIN REAL  
ESTATE AND INVESTMENT  
CO.,

By R. H. GREENE,  
Its President

Attested by:

J. F. TRACY,  
Its Secretary.

State of Arizona,  
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, Arizona State, on this day person-



## Defendant's Exhibit A (Continued)

ally appeared R. H. Greene and J. F. Tracy, known to me to be the persons whose names are subscribed to the foregoing instrument as President and Secretary of the Corporation described in the foregoing instrument, and as such President and Secretary acknowledged to me that they executed the same for said corporation for the purpose and consideration therein expressed, as its free act and deed, and by each of them voluntarily executed.

Given under my hand and seal of office, this 24th day of February A. D. 1913.

[Seal]                    M. C. BARNUM,  
Notary Public.

My Commission expires February 18, 1916.

Filed and recorded at request of Josephine Gerard,  
May 29, 1913, at 9:50 A.M.

VERNON L. VAUGHN,  
County Recorder,  
By J. D. HENDERSON,  
Deputy

# 5425

Compared

Read by W H L

Read to E. M. J.

## WARRANTY DEED

State of Arizona,  
County of Maricopa—ss.

Know All Men by These Presents: That Greene & Griffin Real Estate and Investment Company, a cor-

Defendant's Exhibit A (Continued)

poration of Arizona, of the County of Maricopa, State of Arizona, for and in consideration of the sum of Ten Dollars, and other valuable consideration to it in hand paid by Hattie L. Mosher (widow) have granted, sold and conveyed, and by these presents does grant, sell and convey unto the said Hattie L. Mosher all that certain premises described as follows, viz:

Lots (1) One and (2) Two in Book (3) Three of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said Addition on file and of record in the office of the recorder of Maricopa County, Arizona.

To Have and To Hold, the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said Hattie L. Mosher, her heirs and assigns forever.

And it hereby binds itself, its heirs, executors and administrators, to warrant and forever defend, all and singular, the premises unto the said Hattie L. Mosher, her heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

Except a certain mortgage Dated Feb. 24'', 1913, Recorded May 29'', 1913, at 8:50 A.M., in Book 85 of Mortgages at page 303.

Except taxes for 1914.

Except Paving Lien on Lot (1) amounting to \$600.06.

Defendant's Exhibit A (Continued)

Except paying lien on Lot (2) Two amounting to \$426.89.

In Witness Whereof, Greene & Griffin Real Estate and Investment Company has caused these presents to be executed in its corporate name by its Vice-President and its Corporate seal to be affixed, attested by its Secretary this first day of July A. D. 1914.

[Corporate Seal]

GREENE & GRIFFIN REAL  
ESTATE AND INVESTMENT  
COMPANY

By V. C. COOK

Its Vice-President.

Attested:

By J. F. TRACY,

Its Secretary

State of Arizona,  
County of Maricopa—ss.

Before me, M. C. Barnum, a Notary Public in and for said County, State of Arizona, personally appeared V. C. Cook and J. F. Tracy known to me to be the persons whose names are subscribed to the foregoing instrument as Vice-President and Secretary of the Corporation described in the foregoing instrument, and as such Vice-President and Secretary acknowledged to me that they executed the same, for said corporation for the purpose and consideration therein expressed, as its free act and deed, and by each of them voluntarily executed.

Defendant's Exhibit A (Continued)

Given under my hand and seal of office this 7th day of July A. D. 1914.

[Seal] M. C. BARNUM,  
Notary Public.

(My Commission Expires February 18, 1916.)

Filed and recorded at request of Galpin & Hart, Jul 9, 1914, at 11:15 A.M.

VERNON L. VAUGHN,  
County Recorder  
By J. D. HENDERSON,  
Deputy.

# 6982

Compared

Read by C. S. B.

Read to L. J. H.

EXTENSION OF REALTY MORTGAGE

Memoranda of Agreement between J. Gerard, whose full name is Josephine Gerard, a widow, and Hattie L. Mosher, a widow, both of Phoenix, Arizona.

Witnesseth:

Whereas, on the 24th. day of February, 1913, the Greene and Griffin Real Estate and Investment Company executed a certain promissory note for Nine Thousand Dollars (\$9,000.00) of even date therewith, as follows:

Phoenix, Arizona, Feb. 24th. 1913.

No.

On, or before, three (3) years after date, without grace, for value received, Greene & Griffin R. E.

## Defendant's Exhibit A (Continued)

and Inv. Co. promise to pay to J. Gerard, of Phoenix, Ariz. or order, the sum of Nine Thousand (\$9,000.00) Dollars, with interest thereon at the rate of eight per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and become a part thereof, and to bear interest at the same rate; and should the interest not be paid semi-annually, then the whole sum of principal, and interest, shall become immediately due and payable, at the option of the holder of this note. Should suit be brought to recover on this note Greene & Griffin R. E. & I. Co. promise to pay as attorney's fees \$900.00 additional on amount found due on this note. Principal and interest payable in U. S. Gold Coin. All payable at Phoenix, Arizona.

\$1000.00 or more may be paid  
on the principal of this note  
at any time.

GREENE & GRIFFIN REAL  
ESTATE AND INVESTMENT  
COMPANY.

R. H. GREENE,  
Prest.

J. F. TRACY,  
Secy.

\$9,000.00 Due February 24th. 1916.

and secured the same by a mortgage on the following described real estate, to-wit:

Lots One (1) and Two (2) in Block Three (3)  
of Churchill's Addition to the City of Phoenix,  
as per map, or plat of said addition on



Defendant's Exhibit A (Continued)

file and of record in the office of the County Recorder of Maricopa County, State of Arizona, which said mortgage was recorded in the office

of the said County Recorder in Book 85 of Mortgages at pages 303 and 304, on May 29th. 1913, at the request of the said Josephine Gerard;

And whereas, said Greene & Griffin Real Estate and Investment Company, on the First day of July, 1914, sold, and by Warranty Deed conveyed said real estate to the said Hattie L. Mosher subject to said mortgage, and paving lien on Lot One (1) amounting to \$600.06, and paving lien on Lot Two (2) amounting to \$426.89, which said deed was recorded in the office of the County recorder of Maricopa County, Arizona, in Book 110 of Deeds at page 179 on July 9th, 1914;

And whereas, said Greene & Griffin Real Estate paid, and the said J. Gerard, mortgagee and holder of the said note agrees to extend the time of payment thereon up to, and until, the 24th. day of February, 1928;

Now, Therefore, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon upon the said 24th. day of February, 1928.

In Witness Whereof, the parties hereto have hereunto set their hands, and seals, at Phoenix, Arizona, this 7th day of October, 1918.

J. GERARD,  
HATTIE L. MOSHER.

## Defendant's Exhibit A (Continued)

State of Arizona,  
County of Maricopa—ss.

Before me, J. B. Woodward, a notary public in and for the County of Maricopa, State of Arizona, on this day personally appeared J. Gerard, whose full name is Josephine Gerard and Hattie L. Mosher, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, 1919.

[Seal]                      J. B. WOODWARD,  
Notary Public.

My Commission expires February 16th, 1920.

Filed and recorded at request of Hattie L. Mosher, Oct. 9, 1919, at 3:15 P.M.

EDITH M. JACOBS,  
County Recorder.

By G. H. BOEHM,  
Deputy.

# 17365

Compared

Read by O. A. B.

Read to G. M. P.

## ASSIGNMENT OF MORTGAGE

Know All Men by These Presents: That I, J. Gerard, whose full name is Josephine Gerard, widow, the party of the first part, for and in con-

## Defendant's Exhibit A (Continued)

sideration of the sum of Nine Thousand Dollars, (\$9,000.00) to me in hand paid by Julia Mosher-Collins, the party of the second part, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the 24th day of February, one thousand nine hundred and thirteen, made and executed by The Greene and Griffin Real Estate and Investment Company, to J. Gerard, (whose full name is Josephine Gerard) together with the note in said mortgage described, and the money due, and to become due thereon, which said mortgage was recorded on the 29th day of May, 1913, in Book 85 of the Mortgage Records of Maricopa County, Arizona, at pages 303 and 304.

Together with the note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said party of the second part her true and lawful attorney, irrevocable, in her name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest, and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In Witness Whereof, said party of the first part

Defendant's Exhibit A (Continued)  
has signed these presents the 7th day of October,  
A. D., 1913(9).

J. GERARD.

State of Arizona  
County of Maricopa—ss.

Before me, J. B. Woodward, a Notary Public in  
and for the County of Maricopa, State of Arizona,  
on this day personally appeared J. Gerard, whose  
full name *if* Josephine Gerard known to me to be  
the person whose name is subscribed to the fore-  
going instrument, and acknowledged to me that  
she executed the same for the purpose and con-  
sideration therein expressed.

Given under my hand and seal of office this 7th  
day of October, A. D., 1919.

[Seal] J. B. WOODWARD,  
Notary Public.

My Commission expires February 16th. 1919.

Filed and recorded at the request of H. L.  
Mosher, Nov 8, 1919 at 11:55 A. M.

EDITH M. JACOBS,  
County Recorder.

By G. H. BOEHM,  
Deputy Recorder.

#19265

Compared

Read by O. A. B.

Read to G. M. V.

Defendant's Exhibit A (Continued)

AFFIDAVIT

State of Arizona,  
County of Maricopa—ss.

J. B. Woodward, on oath states; That the certificate of J. Gerard's assignment of mortgage to Julia Mosher Collins, of date October 7th, 1919, and of record in the office of the County Recorder of Maricopa County, Arizona, in Book Seven of Assignments at page 159, is erroneous; in that, the statement therein, "My commission expires February 16th, 1919", should have been February 16th, 1920, to correspond with the truth and record facts of same.

J. B. WOODWARD.

Subscribed and sworn to before me, a Notary Public in and for Maricopa County, Arizona, this March 3, 1920.

[Seal]                   A. W. LENNARD,  
Notary Public.

My commission expires April 14, 1923.

Filed and recorded at request of Hattie Mosher, April 18, 1921, at 1:10 P. M.

EDITH M. JACOBS,  
County Recorder.  
By WALTER W. SMITH,  
Deputy.

#7636

Compared  
Read by O. A. B.  
Read to G. M. V.



## Defendant's Exhibit A (Continued)

## LEASE

This Indenture made this 17th day of September, 1931, by and between H. L. Mosher, party of the first part, and O'Connell Brothers, Inc., a corporation, Arizona, party of the second part

Witnesseth:

That the said party of the first part does by these presents lease and demise unto the said party of the second part, all of

Lot two (2), in Block Three (3), Churchill Addition, an addition to the City of Phoenix, Maricopa County, State of Arizona,

for the term of five (5) years from the 1st day of October, 1931, at the monthly rental of the sum of Seventy-Five (\$75.00) Dollars per month, payable in advance on the first day of each and every month, during the term hereof. And second party is hereby granted the option to renew this lease for a period of two years from the expiration date hereof at the rental of One Hundred (\$100.00) per month, under the same terms and conditions provided, herein, provided that second party does sixty (60) days before the expiration of the original term hereof give to first party in writing its intention to renew.

It Being Agreed as Follows:

1st. That second party shall have the right of possession of said property rent free to the 1st day of October, 1931, from the date of this lease.

2nd. That second party will remove all cement

Defendant's Exhibit A (Continued)

work and level the lot seven inches below city side walk grade.

3rd. That the second party will cause to be erected on said premises a building, placing the North side of said building on the North boundary of said lot, but second party shall have the right to erect the building in such a way as to protect itself for proper lighting facilities on all sides.

4th. At the expiration of the term of this lease, or the expiration of the term of renewal thereof, in case renewal is had, second party shall remove all improvements placed on said property. The building erected on said premises by second party shall conform with the building restrictions and ordinances of the City of Phoenix, State of Arizona.

5th. In addition to the monthly rental described in this lease to be paid by second party to first party for the premises herein leased, the second party agrees to pay all taxes assessed against said above described property from the 1st day of October, 1931, and during the period of the term of this lease, and second party further agrees to pay any new improvement assessments made against said property pro rated during the term of this lease.

It Is Hereby Agreed by second party that should the second party fail to make payment of the rental due hereunder when due, then ten per cent (10%) additional shall be paid on the amount due for each and every month, if such failure shall occur.

## Defendant's Exhibit A (Continued)

It is Understood And Agreed by the parties to this lease that the building, and/or material of any kind placed on the ground above described shall be and remain the property of the party of the second part, and rental is to be paid until removed.

In Witness Whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

H. L. MOSHER,

Party of the First Part

O'CONNELL BROTHERS, INC.

By JOE O'CONNELL, Pres.,

MARY O'CONNELL, Sec'y.

Parties of the Second Part.

(interlined before signed)

H. L. MOSHER

H. L.

O'CONNELL BROS.,

By JOE O'CONNELL,

Pres.

MARY O'CONNELL,

Secretary.

State of Arizona,  
County of Maricopa—ss.

Before me, a Notary Public in and for the County of Maricopa, State of Arizona, personally appeared H. L. Mosher, Known to me to be the person who executed the foregoing lease, and acknowledged to me that she executed said lease for the purposes and consideration therein expressed.



Defendant's Exhibit A (Continued)

TRANSCRIPT OF JUDGMENT

In the United States District Court for the District  
of Arizona

Number and Docket: E-319

Judgment Debtor: Hattie L. Mosher,

Judgment Creditor: Julia C. Collins,

Date of Judgment: January 11, 1937, 5:00 p. m.

Amount of Judgment: \$900.00, With interest from  
date of Judgment, \$34,148.83, With interest at 8%  
per annum from October 7, 1936.

United States of America,  
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States  
District Court for the District of Arizona, do hereby  
certify that the above and foregoing is a true copy  
of Judgment Docket Entry in case No. E-319  
Phoenix, Julia C. Collins, a minor, by Coit I.  
Hughes, her guardian ad litem, vs. Hattie L.  
Mosher, as the same appears from the original rec-  
ord remaining in my office.

Witness my hand and the seal of said Court this  
20th day of January, 1937.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS,

Chief Deputy Clerk.



Defendant's Exhibit A (Continued)

Filed and recorded at request of Coit I. Hughes,  
Jan. 20 at 4:47 P. M., 1937.

W. H. LINVILLE,

County Recorder.

By ROGER G. LAVEEN,

#2763 Deputy.

Compared, read to M. S., read by V. H. S.

District Court of the United States, District of  
Arizona

No. Equity-319-Phoenix

JULIA C. COLLINS, a minor, by Coit I. Hughes,  
her Guardian Ad Litum,

Plaintiff,

vs.

WILLIAM A. VAN BENSCHOTEN, as Guardian  
of the Person and Estate of RICHARD I.  
VAN BENSCHOTEN, a minor, and VAN  
BENSCHOTEN ESTATES, INCORPORAT-  
ED, a corporation, HATTIE L. MOSHER,  
JOE O'CONNELL and JESSIE B. O'CON-  
NELL, his wife,

Defendants.

SPECIAL MASTER'S CERTIFICATE OF  
SALE ON FORECLOSURE

I, J. S. Wheeler, the Special Master in the above  
entitled cause, having been duly appointed by the

## Defendant's Exhibit A (Continued)

Honorable Dave W. Ling, the presiding judge herein, do hereby certify that under and by virtue of an Execution of Judgment and Order of Sale, issued out of the District Court of the United States, District of Arizona, February 13, 1939, in the above entitled action, wherein Julia C. Collins, Plaintiff, recovered judgment against Hattie L. Mosher, defendant, on December 28, 1936, and to me, as such Special Master, duly directed and delivered, whereby I was commanded to seize and sell the property hereinafter described, according to law, and to apply the proceeds towards the satisfaction of the costs of the sale and of the amount of the judgment with its accrued interests and costs, which were the aggregate sum of \$41,957.23 on the date of sale, March 17, 1939.

Acting under the orders of this court I duly levied on the real estate foreclosed in this action and seized the same and on March 17, 1939, at the hour of 10:00 A. M. at the Court House, door, in the City of Phoenix, Maricopa County, Arizona, in the said United States Federal District. I duly sold at Public Outery, after due and legal notice, to Julia C. Collins, the plaintiff, in this action, she having made the highest and best bid therefor at such sale, her bid being the sum of \$41,957.23, which was the whole sum due under the said judgment.

The real estate in said judgment, order of sale, the legal notices for the sale and sold by me at the aforesaid time and date, is described as follows, to-wit:

Defendant's Exhibit A (Continued)

“Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging.”

And I do hereby further certify that the said property was sold in one lot, or parcel, and that the sum of \$41,957.23 was the highest and best bid made, and being in satisfaction of said judgment, interest and costs of sale, and that the same is subject to redemption within six months from the date of the sale thereof pursuant to the Statute in such case made and provided.

Given under my hand this 31st day of March, 1939, at the hour of 3:05 P. M.

J. S. WHEELER,  
Special Master in Equity 319,  
Phoenix.

Filed and Recorded at request of George F. Macdonald, Mar. 31, 1939, at 3:24 P. M.

ROGER G. LAVEEN,  
County Recorder.

By .....  
Deputy.

#8987

Compared, read to A. C., read by R. H.

## Defendant's Exhibit A (Continued)

[Title of District Court and Cause.]

## DEED OF SPECIAL MASTER

This Indenture, made on the day of the signing and execution thereof, by and between J. S. Wheeler, as Special Master in Equity 319 Phoenix, District of Arizona, duly appointed as such Special Master by the Honorable Presiding Judge, Dave W. Ling, December 28, 1936, in the Judgment in said cause which was filed with the Clerk of the Court January 11, 1937; Grantor, and Julia C. Collins, single, residing in the City of Portland, State of Oregon; Grantee:

Witnesseth, whereas the above judgment was based on a suit filed for the above grantee by her Guardian ad litem, Coit I. Hughes, on May 8, 1935; and an amended complaint filed November 14, 1935; and a second amended complaint filed December 30, 1935;

Whereas, the prayer in said complaints was granted and said judgment Ordered, Adjudged and Decreed that J. S. Wheeler be appointed the Special Master of this Court to sell the property foreclosed in the judgment at Public Outcry; and a transcript of this judgment was recorded January 20, 1937 at 4:47 P. M. in the Office of the Recorder of Maricopa County, in the District of Arizona, in Book 1, of Judgments, at Page 288 thereof, said judgment having been certified from the entry of the judgment in Judgment Docket Book No. 2, Page 115, by the Clerk of this Court.

Defendant's Exhibit A (Continued)

Whereas, in the "Findings of Fact" signed by Judge Ling December 28, 1936, and filed in this court January 11, 1937, it sets forth that Hattie L. Mosher received a deed to Lots 1 and 2, Block 3, Churchill Addition to the City of Phoenix, Arizona, July 1, 1914, and said deed was recorded in the Office of the Recorder of Maricopa County, Arizona, July 9, 1914, in Book 110 of Deeds, at Page 179, and said deed, a warranty, recites that the grantee is Hattie L. Mosher, a widow; and she is now, and has been ever since that date, Hattie L. Mosher, a widow; and

Whereas, February 13, 1939, and Execution of Judgment and Order of Sale was issued out of this court and the Special Master made his Return March 29, 1939, setting forth that he had sold the property to the plaintiff, Julia C. Collins, March 17, 1939, and delivered to her a Certificate of Sale March 31, 1939, at 3:05 P. M. which said Certificate of Sale was recorded in the Office of the Recorder of Maricopa County, District of Arizona, March 31, 1939, at 3:24 P. M. in Book 57 of Miscellaneous, at Page 549; that the price bid and accepted was \$41,957.23; and

Whereas, at said sale the said Julia C. Collins, who made the highest and best bid for the said property, described below, became the purchaser thereof, for the sum of \$41,957.23; and

Whereas, George F. Macdonald, Attorney for Julia C. Collina, filed the "Plaintiff's Petition for



## Defendant's Exhibit A (Continued)

Confirmation of Sale" March 31, 1939, at 11:00 A. M. and the "Order Confirming Sale" was signed by the Presiding Judge, Dave W. Ling, March 31, 1939, and both the Petition and the Order were filed with the Clerk of the Court at 11:00 A. M. March 31, 1939; and

Whereas, no redemption has been made within the time allowed by law for redemption, and no Notice of Redemption by any judgment creditor of Hattie L. Mosher, or any other person having a right to redeem, has been served on this Grantor, or recorded in the office of the Recorder of Maricopa County, and the time for such serving and recording of Notices of Intention to redeem has expired, and all such rights did expire September 18, 1939, that being the last day of rights of redemption in any form, either by the former owner, or held by any other person or persons alleging an interest in the property; and

Whereas, by virtue of the foregoing and by virtue of the orders of the court, as set forth on page two of the Order Confirming Sale, that the sale was made final and absolute and that after the execution of the deed to the property that "all rents and incomes and benefits therefrom shall accrue to Julia C. Collins", the said Julia C. Collins is now entitled to a deed as ordered by the court, and as provided by law; now

Therefore, for and in consideration of the sum of Forty-one Thousand, Nine Hundred and Fifty-

Defendant's Exhibit A (Continued)

seven Dollars and Twenty-three Cents (\$41,957.23), the price bid, accepted, and received at said sale as the whole sum due under said judgment in Equity 319, Phoenix, said consideration being the payment of the money due under said mortgage held by the Grantee against Hattie L. Mosher and the property described below; all according to the orders of the court in the Judgment which sets forth on page 3, line 8, that, "the said two lots shall be sold in payment or satisfaction of the plaintiff's said debt"; now

I, J. S. Wheeler, as Special Master and Grantor herein, have bargained, granted, transferred, sold and conveyed to Julia C. Collins, single, of Portland, Oregon, and to her heirs, assigns, and successors, forever, the following described property, to-wit:

"Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder of Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging."

To Have And To Hold, the above described premises, together with all and singular the rights, privileges, and appurtenances thereto in any wise belonging, or in any manner appertaining, unto the said Julia C. Collins, her heirs, assigns, and successors, forever.

## Defendant's Exhibit A (Continued)

In Witness Whereof, the said Grantor, J. S. Wheeler as Special Master in Equity 319, has executed these presents on the Second day of October, in the Year of Our Lord, Nineteen Hundred and Thirty Nine (October 2, 1939).

J. S. WHEELER,  
Special Master in Equity 319,  
Phoenix.

State of Arizona,  
County of Maricopa—ss.

Before me, Virgil King, a Notary Public, in and for the County of Maricopa, State of Arizona, on this day, October 2, 1939, personally appeared J. S. Wheeler, known to me to be the person of that name set forth in the foregoing instrument, as Special Master in Equity 319, in the United States District Court, District of Arizona, at Phoenix, and who subscribed his name thereto in my presence and then and there acknowledged to me that he signed and executed this instrument for the purposes and consideration therein expressed, and who did, then and there, in my presence, affix thereto \$42.00 in United States Revenue Stamps, and duly cancel the same.

[Seal]

VIRGIL KING,  
Notary Public.

My commission expires August 25, 1943.

I. R. S. \$42.00 Cancelled.

Defendant's Exhibit A (Continued)

Filed and recorded at request of Julia C. Collins,  
Oct. 2, 11:14 a. m. 1939.

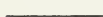
ROGER G. LAVEEN,  
County Recorder.

By .....

#25435 Deputy.

Compared, read to M. S., read by R. H.

[Endorsed]: Filed Feb. 3, 1941, and Sep. 16, 1941.



DEFENDANT'S EXHIBIT D

[Title of District Court and Cause.]

ORDER FOR DECREE PRO CONFESSIO

This cause, having come on regularly for hearing on the motion of George F. Macdonald, as attorney for the plaintiff in the above entitled cause to take the Bill of pro confessio, and it appearing to the court that the plaintiff's Bill of Complaint was filed on the 8th day of May, 1935, and that on the 22nd day of May, 1935, the United States Marshal for the District of Arizona filed the subpoena ad respondendum with his return showing that on the 22nd day of May, 1935, a copy of the Bill of Complaint was filed in the above entitled cause and served on the defendant, Hattie L. Mosher. It is therefore,

## Defendant's Exhibit D (Continued)

Ordered and Decreed that plaintiff's Bill of Complaint be taken pro confessio against the defendant, Hattie L. Mosher.

Done in open court this 20 day of July, 1936.

DAVE W. LING

Judge of the United States  
District Court.

[Endorsed]: Filed Jul. 20, 1936.

[Title of District Court and Cause.]

## FINDINGS OF FACT

This matter came on regularly for hearing on the 7th day of December, 1936, before the Hon. Dave W. Ling, as Judge of the United States District Court in and for the district of Arizona; the plaintiff appearing through Coit I. Hughes, her Guardian Ad Litem, by his attorneys, George F. Macdonald and John W. Ray; and it appearing to the Court that the defendant, Hattie L. Mosher, had been duly served with process, as provided by law, and having failed to answer within the time provided or to make any appearance at the hearing upon motion of the plaintiff, this Court entered a Decree Pro Confessio against the defendant, Hattie L. Mosher, on the 20th day of July, 1936; and it further appearing to the Court that this cause of action had upon motion of the plaintiff been dismissed without prejudice against the defendants, William A. Van Benschoten, as Guardian of the



## Defendant's Exhibit D (Continued)

person and estate of Richard I. Van Benschoten, a minor, and Van Benschoten Estates Incorporated, a corporation, Joe O'Connell and Jessie B. O'Connell, his wife; the allegations of the complaint as to defendant Hattie L. Mosher, who did not appear or answer, are under the Equity rules (17), taken as confessed to be true, and evidence oral and documentary having been introduced by the plaintiff in support of the allegations of plaintiff's Complaint, at the conclusion of which the Court, having considered the evidence and being fully advised in the premises, finds:

That Julia C. Collins is a minor under the age of 21 years and is a citizen and resident of Portland, Oregon, that said plaintiff is the sole heir and only child of Julia Mosher Collins, who died domiciled in the State of Oregon on the 4th day of May, 1920; that Coit I. Hughes is the duly qualified and acting Guardian Ad Litum for the said Julia C. Collins, a minor, to act for and in her behalf in the above entitled cause.

That on or about the 24th day of February, 1913, in Maricopa County, State of Arizona, Green & Griffin Real Estate and Investment Company, a corporation, acting by and through its agents, having a valuable consideration executed and delivered to J. Gerard of Phoenix, Arizona, a certain promissory note in the sum of Nine Thousand (\$9,000.00) Dollars with interest thereon at the rate of eight (8%) per centum per annum until paid, said inter-

## Defendant's Exhibit D (Continued)

est payable semi-annually, if not so paid to be added to the principal and become a part thereof and bear interest at the same rate; and further agreed to pay an attorney fee in the sum of Nine Hundred (\$900.00) dollars, in addition to the amount further due on said note;

That at the same time and part of the same transaction, said corporation, acting by and through its agents, in order to secure the payment of said promissory note together with interest and attorneys fee thereon, as provided in said note, executed and delivered to said J. Gerard a real estate mortgage in the sum of Nine Thousand (\$9000.00) Dollars on the following described property:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

which said mortgage is set out in plaintiff's Complaint; said mortgage was duly signed by said corporation and the corporate seal placed thereon; on the 24th day of February, 1913, said mortgage was duly recorded in the office of County Recorder, Maricopa County, State of Arizona, in Book 85 of Mortgages at Page 303 thereof; but thereafter, on the 1st day of July, 1914, Green & Griffin Real Estate and Investment Company, a corporation, for

## Defendant's Exhibit D (Continued)

good and sufficient consideration, executed and delivered to Hattie L. Mosher a deed to the property described in plaintiff's Complaint, subject to said \$9,000.00 mortgage in favor of J. Gerard, which said deed was duly recorded in the office of the County Recorder, Maricopa County, State of Arizona, on the 9th day of July, 1914, in Book 110 of Deeds, Page 179 thereof; that thereafter Hattie L. Mosher obtained a written extension of said mortgage to February 24, 1928, and on the 9th day of October, 1919, said extension of mortgage was duly recorded in the office of County Recorder, Maricopa County, State of Arizona, in Book 114 of Extension of Mortgages, at Page 361 thereof; said extension was conditioned that Hattie L. Mosher agreed to pay said promissory note and interest;

That on the 7th day of October, 1919, J. Gerard, for due and sufficient consideration, executed and delivered an assignment of said mortgage, recorded in Book 85 of Mortgages, at Page 303 thereof, to Julia Mosher Collins, which said assignment of Mortgage was duly recorded in the office of the County Recorder, Maricopa County, State of Arizona, on the 8th day of November, 1919, in Book 7 of Assignment of Mortgages, Page 159 thereof;

That on the 4th day of May, 1920, the date of the death of Julia Mosher Collins, mother of this plaintiff, that the said Julia Mosher Collins was the owner of the assignment of mortgage that was set forth in plaintiff's Complaint and which appears

## Defendant's Exhibit D (Continued)

of record in Book 7 of Assignment of Mortgages, page 159 thereof.

That by reason of the laws of descent and distribution, by being the sole heir and only child of the said Julia Mosher Collins, deceased, this plaintiff is the owner of said promissory note and mortgage hereinabove referred to; and that said note and mortgage are now due, owing and wholly unpaid by the said Hattie L. Mosher, and that said mortgage is a valid and subsisting lien on the property set forth or described in plaintiff's Complaint and is a prior and superior lien on said property. That Nine Hundred (\$900.00) Dollars is a reasonable attorney's fee to be allowed the plaintiff as and for attorney's fee in this action; and that the plaintiff is entitled to Judgment against the defendant, Hattie L. Mosher, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, with interest thereon at the rate of eight (8%) percent per annum from October 7, 1936, until paid; the further sum of \$900.00 as attorneys' fee and for plaintiff's costs here incurred and expended.

Dated this 28 day of December, 1936.

DAVE W. LING

Judge of U. S. District Court.

[Endorsed]: Filed Jan. 11, 1937.

Defendant's Exhibit D (Continued)

District Court of the United States District of  
Arizona

No. E-319-Phoenix

JULIA C. COLLINS, a Minor, by COIT I.  
HUGHES, her Guardian Ad Litem,

vs.

WILLIAM A. VAN BENSCHOTEN, as Guardian  
of the Person and Estate of RICHARD I.  
VAN BENSCHOTEN, a Minor, and VAN  
BENSCHOTEN ESTATES, INCORPOR-  
ATED, a corporation, HATTIE L. MOSHER,  
JOE O'CONNELL and JESSIE B. O'CON-  
NELL, his wife, Defendants.

JUDGMENT AGAINST DEFT. HATTIE L.  
MOSHER

The defendant Hattie L. Mosher having been duly summoned and failing to answer or plead and having been called and failing to respond thereto her default has heretofore by order of Court been entered and the allegations of the Bill of Complaint and amendments thereto are taken as confessed to be true in so far only as to such non appearing defendant, Hattie L. Mosher; the Court being advised in the premises in the pleadings and the confession by failure to answer, plead or appear by said Hattie L. Mosher;

It is ordered, adjudged and decreed that the de-



## Defendant's Exhibit D (Continued)

defendant, Hattie L. Mosher, is indebted to the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, as Guardian Ad Litem by permission and order of this Court, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, as of date October 7, 1936, the said sum being the principal and interest thereon at eight (8%) per cent. compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, secured by a lien on certain real estate set out and described in that certain mortgage executed by Green & Griffin, a corporation, and assumed by said Hattie L. Mosher in her purchase thereof, as well as in said Mosher's agreement in the extension of the payment of such note and mortgage, which said real estate is set out in the Bill of Complaint and described as follows:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

Wherefore, the premises considered,

It is ordered, adjudged and decreed that the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, Guardian Ad Litem, do have and recover judgment

## Defendant's Exhibit D (Continued)

against said Hattie L. Mosher in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars with interest thereon at the rate of eight (8%) per cent. per annum from October 7, 1936, until paid; also recover of such defendant, Hattie L. Mosher, the further sum of Nine Hundred (\$900.00) Dollars with interest from the date of this Decree as and for reasonable attorneys fee stipulated and promised to be paid by the note in case suit is brought thereon; also recover of such defendant, Hattie L. Mosher, the costs of plaintiff incurred and expended herein, to be taxed by the clerk of this Court, for all of such sums the plaintiff may have execution.

It appearing from the Second Amended Complaint and proof introduced herein that the plaintiff has a lien secured by mortgage on the above described property, the same having been executed by Green & Griffin, dated the 24th day of February, 1913, and assumed by the defendant, Hattie L. Mosher in her purchase from Green & Griffin as well as in her written assumption of the obligation in the Agreement of Extension made with Josephine Gerard;

Therefore, it is ordered, adjudged and decreed that the said mortgage lien on the above described Lots One (1) and Two (2) Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa

## Defendant's Exhibit D (Continued)

County, Arizona, together with all the privileges and appurtenances to the same belonging, be foreclosed and the property be sold at public outcry after due notice of publication thereof, as provided by the Statute Law of the State of Arizona for publication; the sale is to be for cash and to the highest bidder and the said two lots shall be sold in payment or satisfaction of the plaintiff's said debts, including the attorney's fees and costs; the plaintiff or any person may be the purchaser at such sale; however, if the plaintiff be the purchaser and the sale of said lots be not sufficient to pay her debt and costs herein adjudged, then the plaintiff or her Guardian Ad Litem may be declared the purchaser upon the proceedings or acknowledgment of the payment of said plaintiff's debt in full; or if the property should bring more than the amount of this judgment herein adjudged to the plaintiff, then the plaintiff may credit the amount of such purchase bid by the amount of her judgment, interest, attorney's fees and costs, to pay the remainder in money within thirty (30) days after the confirmation of this sale; That J. S. Wheeler be appointed the special Master of this Court to carry this Judgment into effect and conduct such sale; and he will make due advertising thereof, being first indemnified against the cost of publication and advertisement; and the said special Master will be allowed for his services in conducting such sale and the distribution of proceeds, if any, a reasonable fee for such

Defendant's Exhibit D (Continued)

service, which fee may be included in the costs of sale, together with the costs of the advertisement and publication; and he will make due report of his acts hereunder to this Court for confirmation and will be required to execute bond as such special Master in the sum of ..... Thousand Dollars. And this case is continued for such further orders as may be necessary to carry this Judgment into effect.

Done in open Court this 28 day of Dec, 1936.

DAVE W. LING

Judge of United States District Court.

[Endorsed]: Filed Jan. 11, 1937.

[Title of District Court and Cause.]

SPECIAL MASTER'S RETURN ON ORDER OF SALE & WRIT OF EXECUTION

I, J. S. Wheeler, the duly qualified, appointed and acting Special Master in the above entitled action, do hereby report, certify, and make my return as follows, to-wit:

RETURN ON ORDER OF SALE

1. That pursuant to my appointment as Special Master to conduct the Sale on Foreclosure according to the Decree of Judgment signed by the Honorable Presiding Judge, Dave W. Ling, December 28, 1936 and recorded and docketed in Judgment Docket Book No. 2, at Page 115 thereof, and under and by

## Defendant's Exhibit D (Continued)

virtue of that certain Order of Sale issued out of the said United States District Court for the District of Arizona February 13, 1939, which is hereto attached and made a part of this return I did proceed as follows:

2. From February 17, to March 17, 1939, I did advertise and Notice for Sale the property described in the judgment in this cause at a sale by public outcry to be held at the main Washington Street entrance to the Court House of Maricopa County, State of Arizona, located in above set forth Federal District of Arizona, at 10:00 A. M. on Friday, March 17, 1939, all and singular the property described in said Order of Sale.

3. That said advertisements and notices of sale were made in the following manner, to-wit:

By posting true and correct of my Special Master's copies, Notice of Sale, a copy of which is attached hereto, marked Exhibit "A" and made a part of this return, in not less than three (namely four) public places within the county and Federal District wherein the property is situated, all in Phoenix, Arizona.

a—One on a bulletin board near the north door of the Washington Street entrance to the said Maricopa County courthouse.

b—One on a bulletin board in the said County Court House grounds, south thereof, and abutting on a public street.

c—One on a bulletin board at the south west cor-



Defendant's Exhibit D (Continued)

ner of the grounds of the Phoenix City Hall and abutting on a public street.

d—One on the door frame of the Washington Street entrance of a business building at the corner of Fourth and Washington Streets (northeast) and protruding and abutting on a public street.

By causing a true and correct copy of said Special Master's Notice of Sale to be printed and published four consecutive times, namely—February 17 and February 24, March 3 and March 10, 1939, in the "Glendale News" a newspaper of general circulation printed and published in the said county and Federal District in which the property is situated, all of which publication more particularly appears in the publisher's Affidavit hereto attached and marked Exhibit "B" and by reference made part of this return.

4. That the property "Notice for Sale" was more particularly described as follows, to-wit:

"Lots One (1) and Two (2), in Block Three (3) of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging."

5. That thereafter, and on the 17th. day of March, 1939, at the time and place mentioned as aforesaid, I offered for sale, at public outcry, to the highest bidder, all of the said property herein-

## Defendant's Exhibit D (Continued)

before described and thereupon received a bid from Julia C. Collins, by, and through, her attorney of record, George F. Macdonald in the sum of Forty One Thousand Nine Hundred and Fifty Seven Dollars and Twenty Three Cents, (\$41,957.23), that being the highest and best bid made. That thereafter and thereupon I struck off and sold the above described property to Julia C. Collins for the said sum.

6. That in connection with said sale I necessarily incurred costs and expenses of sale in the sum of One Hundred and Ten Dollars and Fifty Eight Cents, this sum includes my fee as Master, and is as follows, to-wit:

## COSTS OF SALE

\$100.00—Fee of Special Master for conducting sale.

8.50—Cost of publishing Notices of Sale.

2.00—Cost of posting 4 Notices of Sale.

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\$110.58—Total costs of sale.

That the itemized amounts of the judgment and accruing interests are as follows, to-wit:

\$34,148.83—Amount of judgment and interest to October 7, 1936.

6,677.97—Interest from October 7, 1936 to March 17, 1939.

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Defendant's Exhibit D (Continued)

\$40,826.80—Due on judgment to date of sale.

110.58—Costs of Sale advanced by attorney for  
Julia C. Collins.

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\$40,937.38—Due Julia C. Collins, the plaintiff.

900.00—Attorney's fee cause.

119.85—Interest on attorney's fee from date  
of trial.

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\$41,957.23—Total amount of judgment at date of  
sale, March 17, 1939.

Respectfully submitted to the Honorable United  
States District Court for the District of Arizona.

Dated March 29th, 1939.

J. S. WHEELER

Special Master in Equity No.  
319, Phoenix, Arizona.

EXHIBIT "A"

The Glendale News

(In Equity)

No. E-319—Phoenix

SPECIAL MASTER'S NOTICE OF SALE

In the United States District Court, District  
of Arizona.

Julia C. Collins, plaintiff, vs. William A. Van  
Benschoten, as Guardian of the person and Estate  
of Richard I. Van Benschoten, a minor, and Van

## Defendant's Exhibit D (Continued)

Benschoten Estates, Incorporated, a corporation, Hattie L. Mosher, Joe O'Connell and Jessie B. O'Connell, his wife, defendants.

Notice is hereby given that the undersigned, J. S. Wheeler, Special Master, has received an Order of Sale, under the hand and seal of the Clerk of the United States District Court for the District of Arizona, dated February 13, 1939, in the case of Julia C. Collins, a minor, by Coit I. Hughes, her guardian at litem, plaintiff, vs. William A. Van Benschoten, as Guardian of the Person and Estate of Richard I. Van Benschoten, a Minor, and Van Benschoten Estates, Incorporated, a corporation, Hattie L. Mosher, Joe O'Connell and Jessie B. O'Connell, his wife, defendants. No. E-319—Phoenix, in Equity, in which case judgment was rendered in said United States District Court in favor of the plaintiff and against the defendant, Hattie L. Mosher, on the 28th day of December, 1936, and filed January 11, 1937, in the aggregate sum of Thirty-Four Thousand, One Hundred and Forty-Eight and 83/100 Dollars (\$34,148.83) as of date of October 7, 1936, with interest thereon at eight percent (8%) per annum from October 7, 1936, until paid; plus Nine Hundred Dollars (\$900.00) Attorney's fee with interest thereon at Six per cent (6%) from December 28, 1936, until paid; plus the costs of suit as taxed by the Clerk of this Court; and a decree of foreclosure of the lien of the mortgage referred to in said decree,

## Defendant's Exhibit D (Continued)

and which said judgment directed that an order of sale of the property described therein, and hereafter fully described, be issued; that said judgment and decree of foreclosure is docketed in Judgment Docket Book No. 2, at page 115 thereof, in the Phoenix Office of the Clerk of said United States District Court; that by said judgment and order of sale I am directed to sell the hereinafter described property for the satisfaction of the above mentioned amounts, interests, costs, expenses and accruing costs; Now Therefore, notice is hereby given that on the 17th day of March, 1939, at the hour of 10:00 A. M. on said day, at the main Washington Street entrance of the Court House, of Maricopa County, Arizona, I, as Special Master of this Court, will sell at Public Outcry the following described property, to-wit: "Lots One (1) and Two (2), in Block Three (3), of Churchill Addition to the City of Phoenix, Maricopa County, Arizona, according to the plat thereof on file in the office of the County Recorder in Book 1 of Maps at page 15, thereof, together with all the privileges and appurtenances to the same belonging." The above described property shall be sold at Public Outcry to the highest bidder for cash, the said cash must accompany such bid, subject to the confirmation of such sale by the above entitled court. Upon confirmation of such sale by the United States District Court for the District of Arizona, I will issue to the purchaser a Certifi-



## Defendant's Exhibit D (Continued)

cate of Sale and after the time allowed by law for the redemption of real property has expired I will issue a good and sufficient deed to the purchaser of said real property at such sale, or to his heir, heirs, representatives, assigns or nominees of such purchaser.

In Witness Whereof, I have hereunto set my hand this 15th day of February, 1939.

Signed: J. S. WHEELER,  
Special Master.

Feb. 17 to  
March 10, 1939.

## EXHIBIT "B"

## AFFIDAVIT OF PUBLICATION

I, Wm. M. Ryan Publisher of The Glendale News a newspaper of general circulation, printed and published in the City of Glendale, County of Maricopa, State of Arizona, do solemnly swear that a copy of the above notice, in the matter of Special Master's Notice of Sale No. EO319 as per clipping attached, was published weekly in the regular and entire edition of the said newspaper, and not in any supplement thereof, for a period of 4 consecutive weeks, as follows, to-wit:

Feb. 17-March 10, 1939, inclusive.

WM. M. RYAN



Defendant's Exhibit D (Continued)

District Court of the United States,  
District of Arizona

No. E-319-Phoenix

Julia C. Collins, a Minor, by Coit I. Hughes, her  
Guardian Ad Litem,

Plaintiff,

vs.

William A. Van Benschoten, as Guardian of the  
Person and Estate of Richard I. Van Ben-  
schoten, a Minor, and Van Benschoten Es-  
tates, Incorporated, a corporation, Hattie L.  
Mosher, Joe O'Connell and Jessie B. O'Con-  
nell, his wife,

Defendants.

**JUDGMENT AGAINST DEFENDANT  
HATTIE L. MOSHER**

The defendant Hattie L. Mosher having been duly summoned and failing to answer or plead and having been called and failing to respond thereto her default has heretofore by order of Court been entered and the allegations of the Bill of Complaint and amendments thereto are taken as confessed to be true in so far only as to such non appearing defendant, Hattie L. Mosher; The Court being advised in the premises in the pleadings and the confession by failure to answer, plead or appear by said Hattie L. Mosher;

## Defendant's Exhibit D (Continued)

It Is Ordered, Adjudged and Decreed that the defendant, Hattie L. Mosher, is indebted to the plaintiff, Julia C. Collins, who sues by Coit I. Hughes, as Guardian Ad Litum by permission and order of this Court, in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars, as of date October 7, 1936, the said sum being the principal and interest thereon at eight (8%) per cent. compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, secured by a lien on certain real estate set out and described in that certain mortgage executed by Green & Griffin, a corporation, and assumed by said Hattie L. Mosher in her purchase thereof, as well as in said Mosher's agreement in the extension of the payment of such note and mortgage, which said real estate is set out in the Bill of Complaint and described as follows:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the Recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging.”

Wherefore, the premises considered,

It Is Ordered, Adjudged and Decreed that the

## Defendant's Exhibit D (Continued)

plaintiff, Julia C. Collins, who sues by Coit I. Hughes, Guardian Ad Litum, do have and recover judgment against said Hattie L. Mosher in the sum of Thirty-Four Thousand, One Hundred Forty-Eight and 83/100 (\$34,148.83) Dollars with interest thereon at the rate of eight (8%) per cent. per annum from October 7, 1936, until paid; also recover of such defendant, Hattie L. Mosher, the further sum of Nine Hundred (\$900.00) dollars with interest from the date of this Decree as and for reasonable attorneys fee stipulated and promised to be paid by the note in case suit is brought thereon; also recover of such defendant, Hattie L. Mosher, the costs of plaintiff incurred and expended herein, to be taxed by the clerk of this Court, for all of such sums the plaintiff may have execution.

It appearing from the Second Amended Complaint and proof introduced herein that the plaintiff has a lien secured by mortgage on the above described property, the same having been executed by Green & Griffin, dated the 24th day of February, 1913, and assumed by the defendant, Hattie L. Mosher in her purchase from Green & Griffin as well as in her written assumption of the obligation in the agreement of Extension made with Josephine Gerard;

Therefore, It Is Ordered, Adjudged and Decreed that the said mortgage lien on the above described Lots One (1) and Two (2) Block Three



## Defendant's Exhibit D (Continued)

(3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat of said addition on file and of record in the office of the recorder of Maricopa County, Arizona, together with all the privileges and appurtenances to the same belonging, be foreclosed and the property be sold at public outcry after due notice of publication thereof, as provided by the Statute Law of the State of Arizona for publication; the sale is to be for cash and to the highest bidder and the said two lots shall be sold in payment or satisfaction of the plaintiff's said debt, including the attorney's fees and costs; the plaintiff or any person may be the purchaser at such sale; however, if the plaintiff be the purchaser and the sale of said lots be not sufficient to pay her debt and costs herein adjudged, then the plaintiff or her Guardian Ad Litum may be declared the purchaser upon the proceedings or acknowledgment of the payment of said plaintiff's debt in full; or if the property should bring more than the amount of this judgment herein adjudged to the plaintiff, then the plaintiff may credit the amount of such purchase bid by the amount of her judgment, interest, attorney's fees and costs, to pay the remainder in money within thirty (30) days after the confirmation of this sale;

That J. S. Wheeler be appointed the special Master of this Court to carry this judgment into effect and conduct such sale; and he will make due

## Defendant's Exhibit D (Continued)

advertising thereof, being first indemnified against the cost of publication and advertisement; and the said special Master will be allowed for his services in conducting such sale and the distribution of proceeds, if any, a reasonable fee for such service, which fee may be included in the costs of sale, together with the costs of the advertisement and publication; and he will make due report of his acts hereunder to this Court for confirmation and will be required to execute bond as such special Master in the sum of            Thousand Dollars.

And this case is continued for such further orders as may be necessary to carry this Judgment into effect. Done in open Court this 28 day of Dec. 1936.

DAVE W. LING,

Judge of United States District Court.

Filed Jan. 11, 1937. Edward W. Scruggs, Clerk. United States District Court for the District of Arizona, by Helen Roach, Deputy Clerk.

Now, Therefore, you the said J. S. Wheeler, Special Master appointed, are hereby commanded and required to seize, advertise for sale and to sell at Public Outcry according to the Statutes of the United States and complying as far as may be with the Statute Laws of the State of Arizona and the usual course of proceedings provided for this Court in Equity cases heretofore as well as the requirements and directions in said decree and

Defendant's Exhibit D (Continued)

judgment, the property hereinabove described and set forth, and to apply the proceeds to the satisfaction in whole or in part, of the said judgment and Order of Sale with its accrued interest and costs and accruing costs incident to the advertisement and sale; and make and file your report of your acts hereunder with the clerk of this court within 20 days after you have made such sale, and do all the things required by the decree of sale and foreclosure and the Statutes in such cases provided. Given under my hand and seal of said United States District Court, at Phoenix, Arizona, this 13th day of February, 1939.

[Seal]                      EDWARD W. SCRUGGS,  
Clerk.

By HELEN STROUP,  
Deputy Clerk.

[Endorsed]: Filed Mar. 29, 1939.

[Title of District Court and Cause.]

ORDER CONFIRMING SALE

The Return of the Execution of Judgment and Order of Sale, and Report thereon, having been duly filed in this court, in the above entitled cause, by the Special Master, J. S. Wheeler, who was heretofore appointed by this court to conduct the sale of the property set forth in the judgment and in the order of sale as being foreclosed, having been heretofore made and filed herein, and the petition of

## Defendant's Exhibit D (Continued)

the plaintiff and purchaser for confirmation of the sale of said property having been filed with the Clerk of this Court, this court finds as follows, to-wit:

That J. S. Wheeler, the duly appointed, qualified and acting Special Master has fully complied with all of the duties and directions contained in said Execution of Judgment and Order of Sale issued out of this court February 13, 1939, by the Clerk of this Court.

That the said J. S. Wheeler duly and correctly gave the Legal Notices and Publications required by law and the usual practices of this Court and the State of Arizona and the statutes therein.

That the sale of the said property described in the Judgment and in the Execution of Judgment and Order of Sale and in the Notices posted and published was held by public outcry on the 17th day of March, 1939 was held and conducted, by the said Special Master, according to the requirements of the Statutes concerned, and in all respects as provided in said Execution of Judgment and Order of Sale, and at said sale the said J. S. Wheeler sold the said property for the sum of \$41,957.23 to Julia C. Collins, the plaintiff in this cause, her bid being the highest and best bid made at the sale, for the said property.

It Is Further Ordered Adjudged and Decreed that the said Return and Report of Sale is accepted as conclusive, true and in all respects as

Defendant's Exhibit D (Continued)

correct. That the sale is, by this Court, made final and absolute and is hereby confirmed.

That the land set forth in this confirmation is:

“Lots One (1) and Two (2), Block Three (3) of Churchill Addition to the City of Phoenix, Arizona, as per map or plat thereof on file and of record in the office of the Recorder of Maricopa County, Arizona, in Book 1 of Maps at Page 15, thereof, together with all the privileges and appurtenances to the same belonging.”

The said Special Master, J. S. Wheeler, is ordered and directed to execute and deliver to the said Julia C. Collins, her heirs or assigns, a certificate of sale on foreclosure for all of the said property sold to her, as required by law, and after the time allowed by law for the redemption of real property has expired, if the real property so sold has not been redeemed by some person or persons having the legal right to redeem, the said Special Master shall execute a good and sufficient deed of the said property to Julia C. Collins, her heirs or assigns, conveying all of the said property so sold. After the execution of said deed all rents and incomes and benefits therefrom shall accrue to Julia C. Collins.

Done in Open Court March 31, 1939.

DAVE W. LING,

Presiding Judge for the District of Arizona.

[Endorsed]: Filed Mar. 31, 1939.



## Defendant's Exhibit D (Continued)

The United States District Court for the  
District of Arizona

United States of America,  
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that the above and foregoing is a true, perfect, and complete copy of Order for Decree Pro Confesso, Findings of Fact, Judgment against Defendant Hattie L. Mosher, Special Master's Return on Order of Sale and Writ of Execution, and Order Confirming Sale, in case No. E-319 Phoenix, Julia C. Collins, a minor, by Coit I. Hughes, her Guardian ad litem, plaintiff, vs. Hattie L. Mosher, et al, Defendants, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court this 18th day of March, A. D. 1941.

[Seal]                    EDWARD W. SCRUGGS,  
Clerk.

By WM. H. LOVELESS,  
Chief Deputy.

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DEFENDANT'S EXHIBIT E

Sub: Churchill Add. Lot: 1 and 2 Block: 3 Sec-  
tion:..... Twp:..... Range:.....

Sub: 6-6-34 Lot:..... Block:.....

Section: 17511 Twp:----- Range:-----

Date Recorded: 10-2-39 Fee: 25435 Date of Deed:  
10-2-39.

Kind of Deed: Deed of Special Master Book:  
337 Page: 148.

Transferred from: Lot 1 Hattie L. Mosher Lot  
2 Joe O'Connell, J. S. Wheeler, as Special Master  
in Equity 319 Phoenix, Dist. of Arizona.

Transferred to: Julia C. Collins.

Address: (Geo. F. Macdonald, Luhrs Tower)

Description: .....

Lot 1 to collins Lot 2 to O'Connell should not  
be included in suit—will get deed if not, suit to  
quiet Title.

No. Equity-319 Phoenix—entitled—Julia C. Col-  
lins, a minor, by Coit I. Hughes, her guardian ad  
litem, plttf. vs. William A. Van Benschoten as  
Gdn. of the person and Est. of Richard I. Van  
Benschoten, minor and Van Benschoten Estates,  
Hattie L. Mosher, Joe O'Connell, deft.

Transferred by: J.

O'CONNELL BROTHERS, INC.

Automobile Rebuilding

505 North Central Avenue

Phoenix — Arizona

December 28, 1939.

Mr. J. D. Brush,  
County Assessor,  
Phoenix, Arizona.

Re: Lot 2, Block 3 of Churchill Addition to  
the City of Phoenix.

Dear Mr. Brush:

It is my understanding that it is the practice of

your office to assess property in the name of a new owner when such ownership is disclosed by Sheriff's Deed or otherwise.

I am still the owner and in possession of the above described property, also known as 505 North Central Avenue, which you have for several years past assessed in my name.

A Sheriff's Deed was recently issued to one Julia C. Collins in satisfaction of an execution upon a judgment obtained by her against Hattie Mosher, who at the time had no interest whatsoever in the property. It was, in fact, a suit between Hattie Mosher and her grand daughter Julia C. Collins. The records of the Federal Court will disclose that the action was dismissed as to me and that my title remains unaffected by the judgment except for the apparent cloud created by this deed, and this cloud is being removed by an action to quiet title, soon to be instituted by the Phoenix Title and Trust Company in my behalf.

Will you, therefore, please continue to assess the property in my name as in past years?

Very truly yours,

Signed: JOE O'CONNELL

Ck. at Title Company Lot 2 should never have been in the suit. Title will be cleared soon 1/8/40. J.

State of Arizona,  
County of Maricopa—ss.

I, J. D. (Jim) Brush, County Assessor in and for the County and State aforesaid, hereby certify that I have compared the foregoing copy with the

original thereof on file in my office, in file drawer labeled Transfers A to H Inclusive, contained in Maricopa County G 3165 Steel File, on the 2nd day of August, 1940, and that the same is a full, true and correct copy of such paper and of the whole thereof.

Witness my hand and seal of office, this 2nd day of August, 1940.

[Seal]

J. D. BRUSH,

County Assessor.

By.....

Deputy.

[Endorsed]: Filed Sep. 16, 1942.



[Endorsed]: No. 10187. United States Circuit Court of Appeals for the Ninth Circuit. Julia C. Collins and Hattie L. Mosher, Appellants, vs. Joe O'Connell and Jessie B. O'Connell, husband and wife, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 6, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.





No. 10,187

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit 7

---

JULIA C. COLLINS and HATTIE L. MOSHER,  
*Appellants,*

VS.

JOE O'CONNELL and JESSIE B. O'CONNELL  
(husband and wife),

*Appellees.*

**APPELLANTS' OPENING BRIEF.**

---

PLATT, HENDERSON, WARNER,  
CRAM & DICKINSON,  
Porter Building, Portland, Oregon,  
*Attorneys for Appellants.*

W. H. CHESTER,  
Phoenix National Bank Building, Phoenix, Arizona,

E. E. SELDEN,  
Luhrs Tower, Phoenix, Arizona,  
*Of Counsel.*

**FILED**

NOV 24 1942

PAUL F. O'BRIEN  
CLERK



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No. 10,187

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

---

JULIA C. COLLINS and HATTIE L. MOSHER,  
*Appellants,*

VS.

JOE O'CONNELL and JESSIE B. O'CONNELL  
(husband and wife),  
*Appellees.*

**APPELLANTS' OPENING BRIEF.**

---

A.

**STATEMENT OF PLEADINGS AND FACTS GIVING JURISDICTION TO DISTRICT COURT AND TO CIRCUIT COURT OF APPEALS.**

1—The jurisdiction of the District Court was acquired By Removal Proceedings. Complaint, Transcript of Record, Page 2.

The complaint shows upon its face that there are two defendants, to-wit:

JULIA C. COLLINS and HATTIE L. MOSHER.

That the mortgage foreclosed by Elsie B. Ganz upon which plaintiffs claim title was in the amount of Six Thousand Dollars (\$6000.00).

The complaint likewise discloses the existence of a separable controversy because paragraph VIII shows that the Certificate of Sale and the Deed of the Special Master were issued to Julia C. Collins conveying all interest of Hattie L. Mosher to Julia C. Collins, and therefore, The Question Of Title is Altogether Separate as between plaintiffs and Julia C. Collins.

The Order of the Superior Court of Maricopa County, State of Arizona, signed by G. A. Rodgers, Presiding Judge, which has never been assailed, nor contradicted in any manner, finds that:

a—Julia C. Collins is a non resident of the State of Arizona and is a resident of the State of Oregon.

b—That Julia C. Collins had filed her petition for removal, her bond for removal and had given notice thereof, all in due form and within the required time.

c—That there was a separable controversy between the plaintiffs and Julia C. Collins. Order of Removal appearing in the Transcript of Record at page 7.

The jurisdiction of the District Court is sustained by United States Code Annotated Title 28, Section 71.

The jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit is sustained by the United States Code Annotated Title 28, Section 225 (a) Review of final decisions (part First thereof). No treaty or statute is involved.

The Notice of Appeal to the Circuit Court of Appeals may be found in the T. of R., P. 52.

The Bond on Appeal to the Circuit Court of Appeals may be found in the T. of R., P. 53.



## B.

**CONCISE STATEMENT OF THE CASE PRESENTING QUESTIONS INVOLVED AND HOW RAISED.**

Greene and Griffin were originally the owners of Lots 1, and 2, Block 3, Churchill Addition to the City of Phoenix, Maricopa County, Arizona.

They executed a mortgage for \$9000.00 on this property to J. Gerard. The property was then deeded to Hattie L. Mosher subject to the mortgage. The mortgage was later assigned to Julia Mosher-Collins by J. Gerard. Julia Mosher-Collins executed a General Power of Attorney to Hattie L. Mosher and Hattie L. Mosher using this Power of Attorney purported to assign this Gerard \$9000.00 mortgage from Julia Mosher-Collins on her own land to James Dean Collins. After the death of Julia Mosher-Collins James Dean Collins purported to release Lot 2, which was one-half of the mortgaged land, with no reduction of the original amount of \$9000.00, and Hattie L. Mosher then executed another mortgage upon the same property released to Elsie B. Ganz for \$6000.00.

Elsie B. Ganz foreclosed the mortgage from Hattie L. Mosher to herself but did not include in her foreclosure suit Julia C. Collins who is the daughter and sole heir of Julia Mosher Collins, deceased.

Julia C. Collins did not recognize the validity of the assignment from, and by, Hattie L. Mosher, made with her Power of Attorney, to James Dean Collins, nor of the Release of Mortgage based thereon nor of the mortgage executed to Elsie B. Ganz by Hattie L. Mosher.

Julia C. Collins through her guardian ad litem brought suit as the owner of the old \$9000.00 Gerard mortgage against Hattie L. Mosher and got judgment resulting in a Certificate of Sale and a Deed from the Special Master appointed by the Court making her the sole owner of Lot 2, Block 3, Churchill Addition.

Joe O'Connell and Jessie B. O'Connell, Grantees by deed from Elsie B. Ganz now bring suit to set aside the deed of the Special Master and the Question is were the things done leading up to the Ganz deed legal and was the old Gerard mortgage properly assigned and satisfied. The burden of establishing the title of Elsie B. Ganz and Joe O'Connell of course rests upon the appellees, and the appellants raised some sixteen objections to the sufficiency of the evidence and the proceedings, laying special stress, however, upon the question of the validity of the purported assignment by Hattie L. Mosher to James Dean Collins and the release of said Gerard mortgage by James Dean Collins. If this assignment and release were invalid, then the Gerard mortgage was never satisfied and descended to Julia C. Collins and she is now the owner of the property.

A more detailed chronology of the facts is set forth hereafter in this brief with proper references to pages of the Transcript of Record.

## C.

## ERRORS RELIED UPON.

## I.

The Court erred in rendering judgment Quieting the Title to Lot 2, Block 3, Churchill, in the plaintiffs, Joe O'Connell and Jessie B. O'Connell because said judgment is contrary to the irrefutable and indisputable evidence in the case for the following reasons:

A—The Plaintiffs' Exhibit No. 1, T. of R., P. 108, showed upon its face that Julia C. Collins was no party to No. 35462 in the Superior Court, being the Ganz Foreclosure Suit, and therefore was not bound thereby.

B—The Record shows that the Attorney and Agent for Mrs. Ganz, J. L. B. Alexander, knew that her mortgage was a second mortgage.

C—The Record shows that no title by adverse possession could have been acquired because the taxes were not paid by Joe O'Connell for 5 consecutive years; the taxes were paid as tenant and not as owner; The O'Connell Brothers, a corporation, and not Joe O'Connell, are and always have been in possession since the Ganz deed to Joe O'Connell and in any event the defendant, Julia C. Collins, had not been of age five years when this suit was commenced.

D—The Assignment of Mortgage from Julia Mosher Collins to James Dean Collins is not acknowledged by the Attorney in Fact as required by law, but is acknowledged by Hattie L. Mosher, as an individual.

E—Defendants' Exhibit D, being the Certified Copies of the instruments in Equity No. 319, resulting in the Deed from the Master in Chancery, conclusively show that Julia C. Collins is the owner of the title to the premises in fee simple.

F—The evidence conclusively shows that the assignment of mortgage from Julia Mosher Collins to James Dean Collins was never delivered and was an attempt to deal in a subject which the transferring agent and Attorney in Fact had a personal interest in adverse to that of her daughter, and principal, Julia Mosher Collins.

## II.

The court erred in denying defendants' objections to plaintiffs' Statement of Costs.

## III.

The court erred in denying defendants' Motion for New Trial because the evidence in the case conclusively showed that judgment as rendered was erroneous and contrary to all the evidence in the case as more specifically set forth under the first Assignment of Error.

---

## D.

### ARGUMENT OF CASE. SUMMARY OF FACTS WITH EXACT DATES AND PAGES OF THE RECORD.

Greene and Griffin, the owners of Lots 1, and 2, Block 3, Churchill Addition to the City of Phoenix, State of Arizona, executed a mortgage to J. Gerard, a widow, in the sum of \$9000.00.

On February 24, 1913, dated. Recorded at request of Josephine Gerard May 29, 1913, at 9:50 A. M., in Book 85, of Mortgages, at Page 303, being Defendants' Exhibit A. T. of R., P. 205.

On July 9, 1914, Greene and Griffin deeded Lots 1, and 2, Block 3, Churchill, to Hattie L. Mosher, widow, subject to the aforesaid mortgage. T. of R., P. 210.

On July 20, 1915, Julia Mosher Collins, the daughter, and only child, of Hattie L. Mosher, executed a General Power of Attorney to her mother, Hattie L. Mosher; recorded six years later, at request of Hattie L. Mosher, in Book 5, of Power of Attorneys, at pages 141 and 142. Plaintiffs' Exhibit 4, T. of R., P. 185.

This Power of Attorney was not recorded, as the Record shows, until April 2, 1921, which was a year after the death of the principal, Julia Mosher Collins, and recorded at the Request of the holder.

There was no showing of any delivery of this Power of Attorney which was put of record by the agent, herself. See T. of R., P. 187, last line, apparently in order to make and transfer an Assignment of the mortgage upon her own land. This assignment is Plaintiffs' Exhibit 4, T. of R., 183.

Previously, October 7, 1918, the said Gerard Mortgage was extended by agreement between J. Gerard, mortgagee, and Hattie L. Mosher, mortgagor, by assumption from Greene and Griffin. See T. of R., P. 178. A year later, October 7, 1919, J. Gerard assigned said mortgage to Julia Mosher Collins. Said assign-



ment was recorded November 8, 1919. Defendants' Exhibit A, T. of R., p. 216.

On March 1, 1920, Hattie L. Mosher, Attorney in Fact for Julia Mosher Collins, executed an assignment of said mortgage to James Dean Collins. Plaintiffs' Exhibit 4, T. of R., P. 183. The said assignment not being recorded by Hattie L. Mosher, the owner of the land, until April 18, 1921, at 1:11 P. M. one year after the death of her principal, Julia Mosher Collins, her daughter.

Julia Mosher Collins died May 4, 1920, with no knowledge of the assignment that deprived her estate and her infant daughter of a \$9000.00 inheritance. T. of R., P. 84. The assignment not being of record no one had knowledge of it. The other instruments that placed the ownership of the mortgage in Julia Mosher Collins, and the ownership of the land in Hattie L. Mosher, were all of due record in the Office of the County Recorder of Maricopa County, Arizona.

On April 11, 1921, James Dean Collins attempted to execute a Partial Satisfaction of Mortgage as to Lot 2, Block 3, Churchill. Plaintiffs' Exhibit 4, T. of R., P. 188. Said satisfaction was recorded April 18th 1921, at 1:12 P. M., the same date as the recordation of the Assignment from Julia Mosher Collins to James Dean Collins, and one minute later.

This Partial Satisfaction was acknowledged by James Dean Collins April 11, 1921, in Portland, Oregon. T. of R., P. 188. This was just 7 days before the assignment to him was placed of Record and 7 days

before he had anything to assign, and without consideration.

On March 31, 1926, James Dean Collins signed an extension of this \$9000.00 Mortgage and on the same day purported to execute an assignment of this mortgage to A. B. C. Davenport. T. of R., P. 192.

The plaintiffs, in their complaint, Paragraph IV thereof, COMPLAIN that on March 1, 1929, that Hattie L. Mosher executed a note to Elsie B. Ganz for \$6000.00, and to secure payment of said note executed a mortgage recorded March 6, 1929, "on the above described premises". T. of R., P. 3. No such mortgage was filed in evidence as an exhibit.

In plaintiffs' Exhibit 4, is the Gerard Mortgage for \$9000.00, and following the mortgage; as recorded by Josephine Gerard and the signature of the Recording Deputy; are eight (8) notations, apparently not existing at the recordation of the mortgage itself. See T. of R., P. 177. Six of which are merely references to specified pages in other books.

The Certified Copy of this Gerard Mortgage in Defendants' Exhibit A. T. of R., pages 205 to 210. Indexed on page 197 as Section, or instrument, D., has no notations such as follow the mortgage as claimed by the plaintiffs in their Exhibit 4.

On September 16, 1931, O'Connell Brothers, Incorporated, signed a lease with Hattie L. Mosher, the owner of the property, for Lot 2, Block 3, Churchill, for five (5) years from October 1, 1932, with an option for two more years. T. of R., P. 220. Indexed on page

197 as Section, or Instrument, I., this said lease had a provision that O'Connell Brothers must pay all taxes during its term.

Plaintiffs' Complaint, COMPLAINS that Hattie L. Mosher neglected and refused to pay said note when the same became due, in Paragraph V. That September 16, 1931, Elsie B. Ganz filed a foreclosure suit. There is neither a note for \$6000.00 nor any mortgage to secure it nor any mortgage, whatsoever, anywhere in the Transcript of Record; excepting the Gerard mortgage; nor in any Exhibit filed. However, in the T. of R., Pages 108 to 164, inclusive, being 57 pages, there are 2 notes and 2 mortgages, among other things, which the Clerk of the Court certifies to as "FOREGOING COPIES". There is no certificate as whether they were ALL of the instruments filed in No. 35462, or not. Both the 2 notes and 2 mortgages were a part of the Complaint in Plaintiffs' Exhibit I. The 2 notes and 2 mortgages were merely a part of the Complaint in No. 35462.

Julia C. Collins was not a party to the above purported lawsuit. Therefore her interests are in no way affected by No. 35462. Plaintiffs' Exhibit I., the purported Ganz' Foreclosure Suit.

It was claimed in Plaintiffs' Exhibit 2, Sheriff's Deed. T. of R., P. 164, that:

"in a certain action then pending"

that the Sheriff levied on Lot 2, Block 3, Churchill, and ultimately sold the same. There is no Lawsuit number connected with this so-called "Sheriff's Deed", and the deed is somewhat indefinite.

However if there is claimed to be a connection between it and No. 35462; the complaint of which was filed in a State Court while the Certificate is by the Clerk of the Maricopa County Clerk, whose certificate shows that the nine (9) instruments were filed in

“Title of Superior Court and Cause”

setting forth no plaintiff and no defendant; it is of no consequence as Julia C. Collins was not a party to either<sup>1</sup>No. 35462, nor was she a party to any suit resulting in a Sheriff’s Deed.

On June 6, 1934, Elsie B. Ganz deeded whatever rights she held in the property to Joe O’Connell. See Plaintiffs’ Exhibit 3. T. of R., P. 169.

On May 8, 1935, Julia C. Collins filed suit by her Guardian ad litem to foreclose the \$9000.00 Gerard mortgage which she inherited from her mother, Julia Mosher Collins. See T of R., P. 233, in the Order for Decree Pro Confesso, which is the first paper in Defendants’ Exhibit D, from Equity 319.

The Record Pages from 233 to 260, inclusive, are the five (5) essential instruments in Equity 319. They are:

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and Order of Sale with Judgment in Writ of .....	251
Execution .....	252
5—Order Confirming Sale Signed by Judge Dave W. Ling .....	257

The Findings of Fact, found and signed, by the Honorable Dave W. Ling, T of R., Pages 234 to 238, inclusive, are here referred to, and adopted herein, and made a part of this Brief, as though incorporated in this Part I, of this Statement of Facts, presented in Defendants' Opening Brief.

There was some evidence as to payment of taxes by Joe O'Connell and some Tax Receipts were filed as Plaintiffs' Exhibit 5, which are not incorporated in the Transcript of Record, but the evidence conclusively showed that the possession of the premises was at all times in O'Connell Brothers, Incorporated. See testimony of Joe O'Connell. T. of R., P. 78, and page 85. Also two photographs filed as Defendants' Exhibits, B, taken in 1940, and C, taken in 1932, shortly after the O'Connell Brothers took possession under their lease from Hattie L. Mosher, the owner.

Moreover the Record fails to show five consecutive years of tax payments by anyone. Likewise the record shows that the defendant, Julia C. Collins, appellant here, had not been of age five years when this



suit was filed. T. of R., P. 86. Also see Findings of Fact signed by the Honorable Judge Dave W. Ling, December 28, 1936, T. Of R., P. 235.

The sole question then is whether under the law, and under the evidence, which stands practically undisputed, Julia C. Collins is the owner of Lot 2, Block 3, Churchill Addition.

If the Assignment of Mortgage to James Dean Collins made by Hattie L. Mosher, Attorney in Fact; which changed the holder of a mortgage on land she owned, herself, to another holder; and the various instruments following it, are not valid then Julia C. Collins is the owner of the land under her foreclosure of the \$9000.00 Gerard Mortgage that she inherited, in her infancy, from her mother. Otherwise the respondents would own it unless other points raised in this Brief, and the Record, negative those claimants.

---

#### ARGUMENT OF LAW POINTS.

1—The validity of all muniments of title involved in this case, in so far as such validity may be governed by statute is controlled by the Revised Statutes of Arizona, 1913, Civil Code.

2, 3, and 4—The Plaintiffs' Exhibit 1, the Ganz Foreclosure Suit, is not binding on Julia C. Collins because she was not a party to said suit. This is fundamental, and essential, to an understanding of this case and applies to all instruments based upon, or derived from, said Foreclosure Proceedings.

5—The record discloses that Mrs. Ganz, or her Attorney, and agent, J. L. B. Alexander, knew that her mortgage was a second mortgage. See Paragraph IV of the Amended Answer, T. of R., Pages 10 and 11. Also see T. of R., 99, also P. 101.

6—O'Connell Brothers could obtain no adverse possession because the record shows that such payment of taxes was not adverse but rather in recognition of the title of H. L. Mosher, because of the provision for such tax payment contained in the Lease filed in Defendants' Exhibit A, indexed as Section I. In this Lease, 5th Agreement, T. of R., P. 231.

7—Plaintiffs' Exhibit 3 shows that the Warranty Deed from Ganz to O'Connell excepts the paying of taxes among other exceptions. T. of R., P. 170.

8—Certain tax receipts, which constitute Plaintiffs' Exhibit 5, are not incorporated in the Transcript of Record.

9—Defendants' Exhibit E shows that the  
 “Phoenix Title and Trust Company”

is the real party in interest in this suit and not the named plaintiffs. T. of R., P. 262, which says:

“\* \* \* and this cloud is being removed by an action to quiet title, soon to be instituted by the Phoenix Title and Trust Company in my behalf.  
 \* \* \*”

10—The instruments in Plaintiffs' Exhibit 4; excepting paper 2, the Gerard-Mosher Extension, T. of R., P. 178; and paper 3, the Gerard Assignment of

her \$9000.00 Mortgage to Julia Mosher Collins, T. of R., P. 181; do not comply with the Revised Code of Arizona, Civil Code, 1913, because paper 4, T. of R., P. 185, is not in the form as provided by said Statute. It is acknowledged as an individual and not as an Attorney in Fact. Also it attempts the delegation of a power of attorney by the holder of a power of attorney. It is fundamental that only the principal could do that.

11—The twelve instruments in Defendants' Exhibit A, pages 196 to 233, inclusive of the T. of R. show conclusively the fee simple title in Julia C. Collins. The Transcript of Judgment, page 224; the Certificate of Sale, page 225; the Deed, page 228; show also the approval of the local District Judge.

12—Exhibit B is a photograph showing the possession of O'Connell Brothers July 18, 1940, six months after the suit was filed. Exhibit C is a photograph of the premises taken June 15, 1932, shortly after the O'Connell Brothers moved in under their lease with Hattie L. Mosher, the owner.

13—Defendants' Exhibit D, the certified copies of Equity 319, pages 233 to 259, inclusive, of the Transcript of Record, show the fee simple title in Julia C. Collins. They are the five essential instruments from the Foreclosure Suit of Julia C. Collins.

The attention of the Appellate Court is respectfully called to the Findings of Fact signed by the Honorable Judge Dave W. Ling, T. of R., P. 234.

14—The Fourteenth Point speaks for itself, page 60, and shows that the fee simple title in Julia C. Collins should never have been disturbed.

15—The Objections to the Statement of Costs should have been sustained. See Memorandum of Costs, T. of R., P. 40. Also see the Objections, T. of R., P. 42. Even if the judgment is reversed this Appellate Court should decide if a Clerk of a United States District Court can stretch his arm out a long quarter of a mile and grasp costs and publications that were incurred in a Maricopa County Superior Court, before removal.

16—As this Court will recall from the statement of this case, appellees' asserted title is bottomed upon the fact that J. D. Collins released the mortgage from Greene and Griffin to J. Gerard (assigned by J. Gerard to Julia Mosher Collins) on Lot 2, Block 3, Churchill prior to the making of the mortgage on Lot 2, by and through which appellees claim. If the partial release of mortgage signed by J. D. Collins as to said Lot 2, Block 3, was for any reason void upon its face as to appellees' predecessors in interest then, of course, the mortgage to Mrs. Ganz through which respondents claim was a second mortgage and appellant Julia C. Collins' title is good.

Unless J. D. Collins had some interest in the Greene and Griffin mortgage to J. Gerard he could not release Lot 2.

The interest of J. D. Collins in the Gerard mortgage was derived, if at all, through the purported assign-

ment of said mortgage from Julia Mosher Collins to James D. Collins, T. of R., P. 183.

This assignment is an essential link in appellees' Chain of Title.

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**IT IS THE SINE QUA NON OF APPELLEES' CASE.**

This assignment of mortgage, the record discloses, was not signed by said Julia Mosher Collins, but was signed by the agent of said Julia Mosher Collins and only a short time prior to the death of said Julia Mosher Collins.

There is a principle of law which estops a principal from repudiating the acts of his agent to the detriment of third parties.

The knowledge of the agent is ordinarily imputed to his principal and according to some cases the recording of the assignment, by the agent after the death of the principal could not be availed of by the heirs and beneficiaries of the deceased principal.

However, to all of these principles of law there is one exception which is as well recognized as the general rule itself.

The exception is a case where the third parties know, or are charged with knowledge, that the agent had an interest in the subject matter of the transaction.

In the instant case the original mortgage was made by Greene and Griffin to J. Gerard and the title to the



land, subject to the said mortgage, was purchased by Hattie L. Mosher.

Therefore when the assignment of this particular mortgage was made transferring the ownership from Julia Mosher Collins, to her husband James Dean Collins, it was apparent upon the very face of the record that the agent was dealing with, and transferring, a mortgage upon her own land.

It is true that the transfer was made by the grandmother of appellant, Julia C. Collins, from her daughter to her son in law, but the law indulges no presumptions in favor of an agent against his principal where there is a personal interest of the agent involved.

The evidence in the instant case showed a very definite notice on the part of the agent for the transfer. First of all the transferee released the mortgage upon the particular lot now in question without any consideration. See T. of R., P. 105.

Secondly the evidence shows that very shortly after the assignment Julia Mosher Collins died.

If the assignment had not been made the mortgage would have been tied up in probate and the portion of the property covered by the mortgage, which was released as to Lot 2, by James D. Collins without consideration, could not have been released in this manner, and the whole thereof would have been subject to the jurisdiction of the Probate Court in Oregon.

Such an evasion of the probate law is surely against Public Policy and would render an assignment made

for such a purpose void, or voidable, at the option of the heirs of the deceased person.

Appellants, however, are not basing their case upon the actual illegality of the transaction, as it now appears to be, nor upon any loss which the mortgagee may have sustained by reason of the assignment, but rather upon the single fact which is undeniable, that the agent and attorney in fact had an interest of record in the mortgage assigned and therefore the assignment was *IPSO FACTO* void, or voidable, at the option of Julia Mosher Collins, the original principal, or her heirs, in the absence of a showing of knowledge or consent on their part. No such knowledge or consent was shown on the part of any of said persons and there were no facts in the evidence from which such knowledge or consent could be presumed, or inferred.

No principle is more firmly fixed in the law than that whenever an agent has, or acquires, an interest in the subject matter with which he purports to deal on behalf of his principal the latter will not be bound unless the principal, with full knowledge of the transaction, ratifies the act of his agent.

Without further comments, except such as are essential by way of connection, appellants before drawing this brief to a close will cite a number of cases which touch upon the principles of law involved in this argument and quote from a few selected cases which are typical of the mass of cases upon this particular subject.

## AUTHORITIES.

In the case of:

*Glover v. Ames*, from the Circuit Court D,  
Maine,

it was held:

“Contract was held invalid because the agent had a personal interest in the sale of a brig.”

also

“(1) That B, as agent, in thus disposing of the vessel to C to pay a firm debt, for which he was individually accountable, was acting in a matter in which his own personal interests were in conflict with the interests of the plaintiff, and the sale was therefore invalid.”

*Glover v. Ames*, 8 Fed. 351.

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In the case of:

*City of Findlay v. Pertz*, Circuit Court of Appeals, Sixth Circuit,

the court quotes in:

66 Fed. (starts on page 427) at page 434, from:  
*Leake on Contracts*, 3rd Ed. 409,

as follows:

“ ‘An agent cannot be allowed to put himself in a position in which his interest and his duty conflict.’ ”

The Court then says that:

“The tendency of such agreement is to corrupt the fidelity of the agent, and is a fraud upon the principal, and is not enforceable, ‘even though it does not induce the agent to act corruptly’.”

The court continues in *Findlay v. Pertz*:

“ ‘It would be most mischievous to hold that a man could come into a court of law to enforce a bargain on the ground that he was not in fact corrupted.

It is quite immaterial that the employer was not damaged.’ ”

*Wald's Pol. Cont.* 245, 246, note,

citing:

*Harrington v. Dock Co.*, 32 B. Div. 549, and other cases.

*Taussig v. Hart*, 58 N. Y. 425;

*United States Rolling Stock Co. v. Atlantic & G. W. R. Co.*, Ohio State, 450 to 460;

*Smith v. Sorby*, 3 Q. B. Div. 552;

*Young v. Hughes*, 32 N. J. Eq. 372;

*Yeoman v. Lasley*, 40 Ohio State 190.

“Contract made by agent acting for both parties may be rescinded by buyer having no knowledge of the dual capacity of the agent.”

*City of Findlay v. Pertz*, 66 Fed. 427, 13 C. C. A. 559, 31 U. S. App. 340.

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The Supreme Court of New York, General Term, First Department, has held that when an agent was interested in accepting a tendered company for constructing a road for his principal was sufficient to make the contract voidable.

“Agent had an interest in accepting plaintiff’s tendered company for constructing the road and therefore contract was voidable.”

*Smith v. Seattle L. S. & E. Ry. Co.*, 72 Hun. 202, 25 N. Y. Supp. 368.

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The District Court of Kansas, First Division, has said, in:

*Stephens v. Gall*, 179 Fed. 938, at page 941;

“Therefore it is axiomatic in the law of agency that it looks with jealousy upon all transactions of the agent

‘and condemns, not only as invalid as to the principal, but as repugnant to public policy, everything which tends to destroy that reliance.’

*Keighler v. Savage Mfg. Co.*, 12 Md. 383, 71 A. Dec. 600.

*Mechem on Agency* Sec. 455,

thus expresses the rule:

‘Fidelity in the agent is what is aimed at, and, as a means of securing it, the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his principal.’

This doctrine, as stated by the court in.

*Tisdale v. Tisdale*, 2 Sneed (Tenn.) 596, 64 Am. Dec. 775:

\* \* \* has its foundation, not so much in the commission of actual fraud, as in the profound knowl-



edge of the human heart which dictated that hallowed petition,

‘Lead us not into temptation, but deliver us from evil;’

and that caused the announcement of the infallible truth that

‘a man cannot serve two masters’.

Gall without the consent and authority of the company could not, as its agent, purchase grain, stocks, and securities, and at the same time by agreement with himself as agent and in his own right for their joint benefit.

SUCH A TRANSACTION WAS CONTRARY TO SOUND PUBLIC POLICY, and the complainant, so far as it appears from the bill of complaint, knew at the time that Gall was claiming to act as agent for the defendant corporation, and as a matter of law he knew that Gall was not authorized to enter into such arrangement so as to bind the company jointly with himself in his independent, individual character.”

*Stephens v. Gall*, 179 Fed. 938 at 941.

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The Supreme Court of Illinois has said in

*Fox v. Simons* (251 Ill. 316), 96 N. E. 233, on page 235.

“It is a familiar doctrine, frequently recognized by this court, that an agent cannot either directly or indirectly have an interest in the business of the principal within the scope of his agency with-

out the consent of his principal, freely given, after full knowledge by the principal of every matter known to the agent which might in any way affect the interests of the principal, and it is of no consequence in such case that no fraud was intended, or that no advantage was, in fact, derived by the agent.

1 Perry on Trusts (6th Ed), Sec. 206;

Tyler v. Sanborn, 128 Ill. 136, 21 N. E. 193, 4

L. R. A. 218, 15 Am. St. Rep. 97;

1 Pomeroy's Eq. Jur., Sec. 155;

Prince v. Dupuy, 163 Ill. 417, 45 N. E. 298."

From:

*Fox v. Simons*, 251 Ill. 316; 96 N. E. 233 on page 235.

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The Supreme Court of North Carolina has said that:

“\* \* \* an agent cannot, without the knowledge of his principal, represent himself and the principal, where their interests conflict.”

*Swindell v. Latham*, 145 N. C. 144, 122 Am. St. Rep. 430, 58 S. E. 1010.

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The Supreme Court of Oregon has said:

“The fidelity of an agent demands this rule:

the acts of an agent in dealing with the subject-matter of his trust or agency which has been confided to his care are scrutinized by the court with jealous care and may be set aside on slight

grounds. *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 587, 21 L. Ed. 328.”

*Burton v. Lithic Mfg. Co.*, 73 Or. 605, 144 Pac. 1149 at 1151.

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The Supreme Court of Iowa has said that an attorney in fact has no implied authority to deal with or sell to himself.

*In re Acken's Estate*, 144 Iowa 519, 123 N. W. 187.

Neither is it necessary to show actual fraud on the part of the agent.

*Hutton v. Sherraid*, 183 Mich. 356, 150 N. W. 135.

It has also been said that an agent must use his authority with an eye single to the interest of his principal.

*Sabin v. Bierbaum*, 281 Fed. 500 (8th Circuit).

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From the *United States Supreme Court*, itself, we quote:

“If an agent to sell effects a sale to himself, under the cover of the name of another person, he becomes, in respect to the property, a trustee of the principal, and at the election of the latter, seasonably made, will be compelled to surrender it, or, if he has disposed of it to a bona fide purchaser, to account not only for its real value, but for any profit realized by him on such resale, and

this will be done upon the demand of the principal, although it may not appear that the property, at the time the agent fraudulently acquired it, was worth more than he paid for it. The law will not in such case, impose upon the principal the burden of proving that he was, in fact, injured, and will not inquire whether the agent has been unfaithful in the discharge of his duty. While his agency continues, he must act, in the matter of such agency, solely with reference to the interests of his principal.

*The law will not permit him, without the knowledge or assent of his principal, to occupy a position in which he will be tempted not to do the best he may for the principal."*

*Robertson v. Chapman*, 152 U. S. 673 at 681-2.

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It has been said by the Supreme Court of Arizona that the duty of an agent to exercise his duties faithfully rests upon positive law and not upon estoppel.

*Button v. Wakelin*, 41 Ariz. 84, 15 Pac. (2d) 956.

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For other cases enumerating the same principles see:

*Porter v. Woodruff*, 36 N. J. Eq. 174, 176;

*Marsh v. Whitmore*, 21 Wall. 178, 22 L. Ed. 482;

*Stimpson v. Commissioner of Internal Revenue*, 55 Fed. (2d) 815;

*Rudin v. King-Richardson Co.*, 37 Fed. (2d) 637;

*Ingraham v. Fidelity Phoenix Fire Ins. Co. of N. Y.*, 16 F. (2d) 251.

In a late case in the Surrogate's Court in New York the court recognized the rule:

“Requiring the strictest scrutiny in cases of divided loyalty and self-interest.”

*In re Willett's Estate*, 17 N. Y. S. (2d) 578.

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The Text Writers likewise recognize the rule. We quote from Restatement of the Law (which is the law in Arizona in the absence of contrary decisions) as follows:

Sec. 165, *Restatement Law of Agency*, page 403,  
 “A disclosed or partially disclosed principal is subject to liability upon a contract purported to be made on his account by an agent authorized to make it for the principal's benefit, although the agent acts for his own or other improper purposes, unless the other party has notice that the agent is not acting for the principal's benefit.”

Comment b. (page 404).

“Whether or not the third person has reason to know of the agent's improper motive is a question of fact. If he knows that the agent is acting for the benefit of himself or a third person, the transaction is suspicious upon its face and the principal is not bound unless the agent is authorized. Thus where the agent signs the principal's name as an accommodation endorser, makes a gift of



the principal's property, or accepts in payment of a debt owed the principal the satisfaction against himself, the other party obtains no rights against the principal because of such transaction."

Again:

Sec. 166, page 406,

"If a third person has such information as would lead a reasonable man to believe that the agent is violating the orders of the principal or that the principal would not wish the agent to act under the conditions known to him, he cannot subject the principal to liability. Any substantial departure by an agent from the usual methods of conducting business is ordinarily a sufficient warning of lack of authorization." Comment a.

Also see Sec. 112, page 292—Rest. Agency, Vol. 1. Comment b—

"\* \* \* Where the agent acquires an interest adverse to that of the principal, and this is not known to the principal, ordinarily he should realize that the principal would not desire him to continue to act, although he does exactly what he would have done otherwise.

Secs. 387-409

state the duties of loyalty of an agent and the consequences of the breach of such duties as between the principal and the agent."

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We also quote from *Mechem on Agency* as follows:

"\* \* \* When, therefore, the agent while ostensibly acting only for his principal, is secretly

acting as the agent of the other party, or is himself the other party, the act done, or contracts made, by him will not be binding upon the principal if he sees fit to repudiate them.”

*Mechem, Agency*, Vol. 2, Second Ed. Sec. 1728, page 1311.

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“Agent cannot sell to himself and another.”

*Reeves v. Callaway*, 78 S. E. 717, 140 Ga. 101.

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“Sale to partnership in which agent is a member or corporation into which such partnership is converted may be set aside.”

*Bedford Coal & Coke Co. v. Parke County Coal Co.*, 89 N. E. 412, 44 Ind. App. 390.

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“Principal is not chargeable with notice of invalidity of bonds pledged as collateral for a note of irresponsible maker when agent was acting in fraud of his principal.”

*Thomson-Houston Electric Co. v. Capitol Electric Co.* (C. C.), 56 Fed. 849.

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“It is a settled principle of Equity that where a person undertakes to act as an agent for another, he cannot be permitted to deal in the subject-

matter of that agency upon his own account and for his own benefit.”

2 *Am. Jur.* page 21, Sec. 261; citing:

*Kurtz v. Farrington*, 104 Conn. 257, 132 A. 540, and many other cases.

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“In all cases where, without the assent of the principal, the agent has assumed to act in a double capacity, either principal may avoid the transaction, at his election, without showing that he was injured.

Actual injury is not the principle upon which the law holds such transactions voidable; the law holds them voidable in order to prevent the agent from putting himself in a position where he will be tempted to betray his principal.”

2 *Am. Jur.* 213, Sec. 265.

“It is a settled principle of equity that where a person undertakes to act as an agent for another, he cannot be permitted to deal in the subject-matter of that agency upon his own account and for his own benefit.”

2 *Am. Jur.* page 210, Sec. 261, *supra*,

which is here repeated for the purpose of emphasizing the acts of the holder of a power of attorney who used it for two self-benefits, viz.:

a. Keeping the mortgage out of the Probate Court of a far-distant state, and

b. Getting the mortgage into the hands of a person who would not be likely to oppose the signing of papers she sent up to be signed by him.

The whole World had notice of this self-benefit, and self-interest, as she was the recorded owner of the land in question, and, as all deaths were required to be publicly recorded, Notice of the death of the original owner of the mortgage one year before this fraudulent assignment was put of record, was Notice to All.

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No principle is better established in the law than that loyalty to his trust is the first duty which every agent owes to his principal. It underlies all agencies. The law condemns as contrary to public policy any conduct in an agent which involves a breach of fidelity in that relationship which is most jealously guarded. An agent will not be permitted to place himself in a position where his own interests may become antagonistic to those of his principal. The law by which an agent is bound to regulate his conduct "is a law of jealousy". And an agent who is authorized to sell his principal's property certainly cannot, without his principal's consent, purchase property for himself. The above are the principles expressed throughout in *Porter v. Woodruff*, 36 N. J. Eq. 174 to 188 inclusive, and the case is so appropriate that we ask the Court to consider the entire reading of this pertinent opinion as an appropriate part of this brief.

Other cases are:

*Marsh v. Whitmore*, 21 Wall. 178, 22 L. Ed. 482;

*Robertson v. Chapman*, 152 U. S. 673, 14 Sup. Ct. 741, 38 L. Ed. 592.

See also:

*Starkweather v. Conner*, 38 P. (2d) 311, 44 A. 369;

*Winget v. Rockwood*, 69 F. (2d) 326;

*Quines v. Davis*, 26 F. (2d) 80;

*Am. Law Inst. Restatement, Agency*, 393;

*Mechem on Agency*, Section 754.

**FIDELITY TO HIS TRUST IS THE FIRST DUTY OF ANY AGENT.**

This principal is so firmly rooted in the law that whenever an agent has, or acquires, an interest in the subject matter with which he purports to deal on behalf of his principal, the latter will not be bound unless the principal, with full knowledge of the transaction ratifies the act of his agent.

In the Court of Civil Appeals, of Texas,  
 Judge W. S. Fly,  
 Chief Justice,

wrote the Opinion in:

*Binder v. Milliken*, 201 S. W. R. Beginning on page 239. *Opinion* by Judge Fly, page 240,

who said:

“(3) The law abhors double dealing, especially upon the part of one in whom a trust is reposed and confidence given; and when the agent turns aside from the plain paths of his agency and seeks individual advantage inconsistent with, and antagonistic to, the rights and interests of his principal, his authority is automatically destroyed and agency revoked. He cannot be permitted to hold a position where self-interest and



honor become contending forces, and where dire temptation would assail and ordinarily conquer him.

The rule is thus stated by

*Mechem on Agency*, Section 751.

Quoting from the same author,

*Mechem on Agency*, Section 754,

‘It is fundamental that an agent, without the full knowledge and consent of his principal, will not be permitted to act as agent in transactions in which he is personally interested.

It is often said that his endeavor to do so is therefore enough to put the other party on his guard.’

As said in:

*Pine Mt. Coal Co. v. Bailey*, 94 Fed. 258, 36  
C. C. A. 229:

‘As long as the agent is conducting negotiations for his principal with third parties he may act on his behalf; but the moment he undertakes, without the knowledge of his principal, to conduct them with himself, his agency ceases, and the powers and liabilities of that relation no longer exists.’

The law is so jealous of the good faith and loyalty of agents that it will not permit the agent to blend his private interests with those of his principal, and no such authority will be allowed unless granted in express terms by the principal. This principle is clearly stated by the New York Court of Appeals in the case of

*Bank of New York v. American Dock and Trust Co.*, 143 N. Y. 559, 38 N. E. 713,

In which it was held an agent authorized to receive goods for storage and issue warehouse receipts therefor did not have authority to issue receipts to himself. The court said:

‘It is an acknowledged principle of the law of agency that a general power of attorney or authority given to the agent to do and act in behalf of the principal does not extend to a case where it appears that the agent himself is the person interested or the other side.

If such a power is intended to be given, it must be expressed in language so plain that no other interpretation can rationally be given it; for it is against the general law of reason that an agent should be intrusted with power to act for his principal and for himself at the same time.’

The principle is reasonable, and there is no escape from it. The courts of Texas have followed the rule stated, and in the case of:

*Cotton v. Rand*, 93 Texas 7, 51 S. W. 838, 53 S. W. 343,

The Supreme Court of Texas says:

‘We are clearly of the opinion that such a breach of duty on part of an agent, unless condoned by the principal with a full knowledge of the facts, puts an end, ipso facto, to the agency.

The law requires fidelity of agents and holds them no longer capable of representing their principals when without the knowledge of the latter, they acquire an interest in the matter of the agency adverse to their employers.’ ”

*Binder v. Milliken*, 201 S. W. R. Beginning on page 239. *Opinion* by Judge Fly, page 240.

From all of the foregoing authorities it is plain to see that neither a principal, nor his heirs, will be bound by the acts of his agent done in the furtherance of a purpose in which the agent has a personal interest.

Dated, Portland, Oregon,  
November 23, 1942.

Respectfully submitted,

PLATT, HENDERSON, WARNER,  
CRAM & DICKINSON,

By WILBER HENDERSON,

*Attorneys for Appellants.*

W. H. CHESTER,  
E. E. SELDEN,  
*Of Counsel.*



**No. 10187**

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IN THE  
**United States Circuit Court of Appeals**  
**For the Ninth Circuit** 8

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JULIA C. COLLINS and HATTIE L.  
MOSHER,

*Appellants,*

vs.

JOE O'CONNELL and JESSIE B.  
O'CONNELL, husband and wife,

*Appellees.*

---

**APPELLEES' BRIEF**

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GUST, ROSENFELD, DIVELBESS, ROBINETTE  
AND COOLIDGE,  
Professional Building,  
Phoenix, Arizona  
Attorneys for Appellees

**FILED**

DEC 30 1942

PAUL P. O'BRIEN,  
CLERK







## ATTORNEYS OF RECORD

PLATT, HENDERSON, WARNER & CRAM,  
1115 Porter Building,  
Portland, Oregon;

E. E. SELDEN,  
612 Luhrs Tower,  
Phoenix, Arizona;

NOAL R. GRAY,  
301 Phoenix National Bank Building,  
Phoenix, Arizona;

Attorneys for Appellants.

GUST, ROSENFELD, DIVELBESS, ROBINETTE,  
& COOLIDGE,

201-11 Professional Building,  
Phoenix, Arizona,

Attorneys for Appellees.

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O'CONNELL, husband and wife,

*Appellees.*

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**APPELLEES' BRIEF**

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**On Appeal from the District Court of the United States  
for the District of Arizona**

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**I.**

**STATEMENT OF JURISDICTION**

Appellee admits the Statement of Facts as to jurisdiction, found on pages 1 and 2 of appellants' opening brief.

## II.

## STATEMENT OF FACTS

(Figures in parenthesis refer to page number of the Transcript of Record).

Appellees brought this suit to quiet their title against the appellants to Lot 2 in Block 3, Churchill Addition, an Addition to the City of Phoenix, Maricopa County, Arizona. (2). The facts out of which the dispute as to the title arises are the following: On February 24, 1913, J. Gerard, a widow, was the owner of said premises, (2, 9, 30), and conveyed the same to Greene and Griffin Real Estate and Investment Company, (2, 10, 30). On the same date, Greene and Griffin Real Estate and Investment Company, a corporation, gave a mortgage to J. Gerard, for the sum of \$9,000.00. on Lots 1 and 2, Block 3, in said Churchill Addition. (33, 172, 177). On July 1st, 1914, said Greene and Griffin Real Estate and Investment Company, conveyed said premises by Warranty Deed to Hattie L. Mosher, a widow. (3, 10, 31). On October 7, 1918, Hattie L. Mosher and J. Gerard entered into an agreement extending the time for the payment of said mortgage, (33, 178), which, according to its terms, was payable on or before three years after date, in the following language:

“AND, WHEREAS, said promissory note has not been paid and the said J. Gerard, mortgagee, and holder of said note, agrees to extend the time of payment thereof up to and until the 24th day of February, 1928.

NOW, THEREFORE, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon on the 24th day of February, 1928.” (180).

Said extension agreement, while dated October 7, 1918, (180) was not acknowledged until the 7th day of October, 1919, (181), and was recorded on October 9, 1919. (181). On October 7, 1919, J. Gerard assigned said mortgage, together with the note therein described, to Julia Mosher Collins, daughter of Hattie L. Mosher. (181-183).

On March 1, 1920, Julia Mosher Collins assigned said mortgage to James Dean Collins, commonly known as Dean Collins, husband of assignor. Said assignment recited a consideration of \$9,000.00, (183), being the principal amount of the mortgage and is signed, "Julia Mosher Collins, by Hattie L. Mosher, her attorney-in-fact". The assignment was acknowledged March 1, 1920, before J. B. Woodward, a Notary Public, for Maricopa County, Arizona, (184), and was filed and recorded at the request of Hattie Mosher on April 18, 1921, in Book 8 of Assignments of Mortgages, pages 372-3, in the office of the County Recorder of Maricopa County, Arizona. (185). Said Assignment of Mortgage appears to have been executed by Hattie L. Mosher under a power of attorney executed by Julia Winifred Mosher Collins, on the 20th day of July, 1915, (185-188). Said power of attorney recites, "Julia Winifred Mosher Collins was, until September 16, 1914, Julia Winifred Mosher", (185), and was acknowledged before a Notary Public in Multnomah County, Oregon, on July 20, 1915, (187), and recorded at the request of Hattie L. Mosher on April 2, 1921, in Book 5 of Powers of Attorney, page 141-2, (188), in the office of the County Recorder of Maricopa County, Arizona.

On April 11, 1921, James Dean Collins, assignee in the above mentioned assignment, executed a partial Satisfaction of Mortgage, releasing Lot 2, Block 3,

Churchill Addition, being the lot involved in this litigation from the above mentioned mortgage, (188-189). Said partial release was acknowledged before a Notary Public in Multnomah County, Oregon, on April 11, 1921, and recorded at the request of Hattie L. Mosher, on April 18, 1921, in Book 21 of Releases of Mortgages, page 101, in the office of the County Recorder of Maricopa County, Arizona. (189).

On March 31, 1926, James Dean Collins and Hattie L. Mosher entered into an agreement extending the time for the payment of said mortgage until the 31st day of March, 1929; said assignment was acknowledged by Hattie L. Mosher before J. J. Barkley, Notary Public, in Maricopa County, Arizona, on April 1, 1926, and was acknowledged by James Dean Collins before Alexander Hamilton, a Notary Public, for Marion County, Oregon, on the 8th day of April, 1926, and was recorded at the request of A. B. C. Davenport, on April 13, 1926, in Book 191 of Mortgages, page 208, in the office of the County Recorder of Maricopa County, Arizona. (189-192). Said extension agreement recited that said Lot 2 in Block 3 had theretofore been released from said mortgage. (190).

Also, on the 31st day of March, 1926, James Dean Collins, commonly known as Dean Collins, assigned the above mentioned mortgage to A. B. C. Davenport, by assignment acknowledged before Alexander Hamilton, a Notary Public, for Marion County, Oregon, on April 8, 1926, and recorded at the request of A. B. C. Davenport, in the office of the County Recorder of Maricopa County, Arizona, on April 13, 1926, in Book 12 of Assignments, at page 388. (192-194).

On April 26, 1929, A. B. C. Davenport, as assignee of the above mentioned mortgage, satisfied the mort-

gage of record by marginal release, before O. E. Rogers, Jr., Deputy County Recorder, and at the time of said release, the County Recorder certified by proper notation, that the note secured by the mortgage was produced and cancelled in his presence. (177).

On the 28th day of March, 1928, after the recording of the above mentioned partial satisfaction of mortgage, (188-189), but before the same was fully satisfied of record, (177), Hattie L. Mosher executed a mortgage of said Lot 2, Block 3, Churchill Addition, to Elsie B. Ganz, for the principal sum of \$5,000.00. Said mortgage was acknowledged on the 28th day of March, 1928, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 28, 1928, in Book 209 of Mortgages, page 562. (127-131).

On the first day of March, 1929, said Hattie L. Mosher executed another mortgage to the said Elsie B. Ganz, for the principal sum of \$6,000.00, on said Lot 2, Block 3, Churchill Addition to the City of Phoenix. Said mortgage was acknowledged on the 6th day of March, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, on March 6, 1929, in Book 225 of Mortgages, at page 481. (132-136).

On the 16th day of September, 1931, mortgagee, Elsie B. Ganz, filed her complaint in the Superior Court of Maricopa County, Arizona, against Hattie L. Mosher, the mortgagor, and Maricopa County, to foreclose the two mortgages last above mentioned, (108-137). Summons was personally served on the defendant, Hattie L. Mosher, (138), and she appeared and filed a demurrer and an answer to the complaint. (139-142). Decree of foreclosure was entered on the 4th day of January, 1932, awarding the plaintiff a judgment in the sum of \$11,000.00, with interest at eight per cent



per annum, until paid, together with costs of foreclosure and costs of suit. (142-146). A special execution was issued and the property sold at sheriff's sale. (146-151). Motion to set aside sale was granted, (151-152). Thereafter, another special execution was issued and another sale held. (153-160). The decree of foreclosure and the second sale at which Mrs. Ganz was the purchaser, were held valid by the Supreme Court of the State of Arizona. *Mosher v. Ganz*, 42 Ariz. 314; 25 Pac. (2d) 555. The time to redeem having expired, Sheriff's Deed was issued to said Elsie B. Ganz on October 27, 1932, which was recorded in the office of the County Recorder of Maricopa County, Arizona, on December 15, 1932. (164-168).

On the first day of May, 1934, said Elsie B. Ganz, a widow, executed a Warranty Deed of said premises to the plaintiffs. The warranty in said deed excepted certain small paving assessments, the rights of O'Connell Brothers, under a lease dated September 17, 1931, made and executed by H. L. Mosher to said O'Connell Brothers, a corporation, for the term of five years from October 1, 1931, and a judgment against Hattie L. Mosher for a small sum in favor of the Salt River Valley Water Users' Association. (169-171).

Plaintiffs, having been in possession under the above mentioned lease from Hattie L. Mosher, remained in possession after receiving the deed from Elsie B. Ganz, and thereafter paid no further rent and claimed and held the said premises as owners under said deed, and paying the taxes thereon as owners. (32, 33, 75, 77).

There appears in the Transcript of Record, a transcript of judgment in the United States District Court, for the District of Arizona, number and docket E-319; judgment debtor, Hattie L. Mosher; judgment creditor,

Julia C. Collins; date of judgment, January 11, 1937; amount of judgment, \$900.00, with interest from date of judgment; \$34,148.83, with interest at 8% per annum from October 7, 1936, (224); and a special master's certificate of sale dated the 31st day of March, 1939, (225-227), issued under and by virtue of an execution of judgment and order of sale issued out of the United States District Court for the District of Arizona, February 13, 1939 in an action in which Julia C. Collins, plaintiff, recovered judgment against Hattie L. Mosher, defendant, also a Deed of the Special Master, covering Lots 1 and 2, Block 3 of Churchill Addition to the City of Phoenix, dated October 2, 1939, and recorded in the office of the County Recorder of Maricopa County, Arizona, on October 2, 1939, (228-232).

The Transcript of Record also shows Findings of Fact and a judgment showing that the above mentioned sheriff's sale was on a judgment entered against Hattie L. Mosher by default on the mortgage dated the 24th day of February, 1913, executed by Greene and Griffin Real Estate and Investment Company, to J. Gerard, and assumed by the defendant, Hattie L. Mosher in her purchase from Greene and Griffin, as well as in her written assumption of the obligation in the agreement of extension made with Josephine Gerard, and also that the above judgment is based on the principal of said mortgage, together with interest thereon at eight per cent, compounded at semi-annual rests as in the note provided, from the date of the assignment by Josephine Gerard to Julia Mosher Collins, October 7, 1919, to October 7, 1936, the date of the decree of foreclosure, (234-238).

It appears in the Findings of Fact and in the evidence that the plaintiffs and one Van Benschoten, evidently the owner of Lot 1, not involved in this suit, were originally parties to said Collins v. Mosher suit, but were dismissed from the suit, and after such dismissal was made, the suit proceeded against Mrs. Mosher only; by default, (35, 87).

It is evident from the foregoing statement of facts that the plaintiff's title comes through the original deed of J. Gerard to Greene and Griffin Real Estate and Investment Company, and on the face of the record is a perfect chain of title, and that the defendant's claim of title stems from the same deed of J. Gerard to Greene and Griffin Real Estate and Investment Company, (2, 10, 30), and through the mortgage executed by Greene and Griffin Real Estate and Investment Company to J. Gerard, (234-238), and that the break in this title comes from the fact that on March 1, 1920, said mortgage was assigned by Julia Mosher Collins, the then owner thereof, to her husband, James Dean Collins, (183-185), said assignment being made by a power of attorney then held by Hattie L. Mosher, (185-187), and that said mortgage was thereafter released as to Lot 2, Block 3, the property involved in this suit, by partial release by said James Dean Collins, (188-189), and thereafter assigned by said James Dean Collins to A. B. C. Davenport, and thereafter wholly satisfied by said Davenport, (177, 192), and after both of said releases had been made, foreclosure suit was filed thereon by Julia C. Collins, by Coit I. Hughes, her Guardian ad Litem, to foreclose said mortgage, alleging that she was the owner thereof as the heir of her mother, Julia Mosher Collins, (234-239), but palinly not disclosing to the court that said

mortgage had been assigned to her father, James Dean Collins, and twice released by him, (234-239).

It will be noted that if the said Julia C. Collins had been in fact the owner of said J. Gerard mortgage, the same being a prior mortgage, there would have been no occasion for making her a party to the foreclosure of the Ganz mortgages, as in such event, said Ganz mortgages would have been second mortgages, and she would not be affected by the foreclosure suit as said suit and the sale thereunder would operate merely to transfer the interest of the mortgagor subject to said first mortgage, and that for this reason said Julia C. Collins is not interested in the validity of the foreclosure proceedings in the Ganz mortgages. However, said foreclosure proceedings have been upheld by the Supreme Court of the State of Arizona.

*Mosher v. Ganz*, 42 Ariz. 314;  
25 Pac. (2d) 555.

It will be further noted that if Julia C. Collins had been the owner of the Gerard mortgage, and had the right to foreclose the same, when she filed the foreclosure suit in the United States District Court, for the District of Arizona, the plaintiffs were the owners of the mortgaged premises, subject to said mortgage at the time said foreclosure suit was filed, and not being parties to said foreclosure decree, said decree could not have operated to divest their interest in the property and so said foreclosure suit would have been defective, and the most that plaintiff could have done would be to foreclose over again on the ground that she had made a mistake in the first foreclosure.

*Williams v. Williams*, 32 Ariz. 164;  
256 Pac. 356.

This she probably would not have been in a position to do, by reason of the fact that she had knowledge of the rights of the plaintiffs, as is shown by the fact that she originally made them parties, and thereafter dismissed them from the suit, (234-235).

However, in this suit to quiet title, the plaintiffs' claim as owners of the property, and the trial court found that they are such owners, making appropriate findings to that effect, and its findings are not attacked by the appellants in this suit, from which it follows that the judgment in this case must be affirmed. (30-37).

The only ground upon which the trial court could have held that the plaintiffs were not entitled to a decree quieting title in this suit is that the assignment of the Gerard mortgage from Julia Mosher Collins to her husband, James Dean Collins, was in some respect invalid. The only grounds upon which appellants contend that said assignment was not valid are the following:

First, That the power of attorney under which Mrs. Mosher executed said assignment of mortgage was not properly acknowledged, as it purports to be acknowledged by her individually, without an express statement that she acknowledges as attorney in fact. This point has been previously passed upon by this court against appellants' contention, *Collins v. Streitz*, 95 Fed. 2d, 430, 434, and since said decision was based upon this court's interpretation of the law of Arizona, and there is no decision to the contrary in said state, the point must be regarded as settled.

Second, appellants mention the fact that said power of attorney was not recorded until after the death of



the donor in the power. The point is of no significance as recording was not necessary to the validity of the power. *Sec. 2066, R. S. 1913.*

Third, appellants contend that the assignment from Julia Mosher Collins to James Dean Collins, her husband, was not delivered prior to the death of Julia Mosher Collins. The first answer to this contention is, the trial court found that it was so delivered, and said finding is not attacked in this court, and therefore must stand, (33-34). However, said finding of the trial court is supported by legal presumptions not rebutted by satisfactory evidence, and could not be set aside by this court even if it had been properly attacked.

The acknowledgment of an instrument raises a presumption of its delivery as of the date of the instrument.

- Collins v. Streit*, 95 Fed. (2d) 430, 438  
 (9th Cir.)  
*1 Corpus Juris Secundum*, Sec. 26, p. 810  
*1 Corpus Juris*, Sec. 81, p. 785  
*Hiddleston v. Cahoon*, 214 Pac. 1042  
*16 American Jurisprudence*, Secs. 387, 388,  
 p. 657  
*Gibson v. Gibson*, 217 N. W. 852  
*Tucker v. Glew*, 139 N. W. 565  
*Sasseen v. Farmer*, 201 S. W. 39, 41  
*Wilmarth v. Hill*, 226 N. W. 557

Under the laws of Arizona an assignment of mortgage is required to be recorded.

- Newman v. Fidelity Savings & Loan Assn.*,  
 14 Ariz. 354; 128 Pac. 53  
*Buerger Bros. Supply Co. v. El Ray Furn. Co.*,  
 45 Ariz. 1



The certified copy of an instrument required to be recorded is admissible in evidence without further proof.

Sec. 4456, Revised Statutes of Ariz. 1928.

While the presumption of delivery as of the date of the instrument may be rebutted by satisfactory evidence, in this case the only testimony to the contrary is that of Hattie L. Mosher, one of the defendants. This testimony is far from satisfactory, (82-107). This court will probably find the testimony more understandable by reading the opinions of the Supreme Court of Arizona in the cases of,

*Collins v. Collins*, 46 Ariz. 485; 52 Pac. (2d) 1169, and  
*Collins v. Streitz*, 47 Ariz. 146; 54 Pac. (2d) 264,  
 Appeal dismissed, 298 U. S. 640;  
 80 Law ed. 1373.

The court may also be enlightened by referring to its own opinions in the following cases:

*Collins v. Dye*, 94 Fed. (2d) 799,  
 Certiorari denied, 305 U. S. 601  
*Collins v. Finley*, 94 Fed. (2d) 935,  
 Certiorari denied, 305 U. S. 618  
*Collins v. Streitz*, 95 Fed. (2d) 430,  
 Certiorari denied, 305 U. S. 608  
*Collins v. Mosher*, 91 Fed. (2d) 582  
*Collins v. Mosher*, 115 Fed. (2d) 900,  
 Certiorari denied, 313 U. S. 581  
*Lount v. Mosher*, 115 Fed. (2d) 903;  
 313 U. S. 581  
*Collins v. Finley*, 65 Fed. (2d) 625

It is evident that the part played by Hattie L. Mosher, defendant's witness in this case in the above litigation, is not a minor part.

The trial court made a Conclusion of Law, (36) to the effect that Julia Mosher Collins, the mother of the defendant, Julia C. Collins, became estopped prior to her death from questioning the assignment and transfer of the mortgage under her power of attorney as against the plaintiffs who relied on the records and purchased the mortgaged property in good faith and for value without knowledge of any claim of mortgage thereon, by reason of having placed said power of attorney and said mortgage in the control of her mother and that said estoppel extends to the plaintiff as she claims by inheritance from her mother. There can be no question about the soundness of this conclusion. The assignment was executed some two months before Julia Mosher Collins died. It is the duty of an agent to communicate to his principal every fact affecting the transaction entrusted to his care which comes to his knowledge in the course of or during its performance, and this duty in an action between the principal and the adverse party is conclusively presumed to have been obeyed. Hence, it is conclusively presumed that Mrs. Mosher communicated the fact of the execution of this assignment to her daughter, who was her principal, and hence, the daughter, making no objection to the transaction prior to her death, clearly approved or ratified the assignment.

*Pringle v. Modern Woodmen of America*,  
107 N. W. 756

*O'Connor v. Knights & Ladies of Security*,  
L. R. A. 1917 B, pages 897, 906.

Another authority cites the principle as follows:

“The doctrine of constructive notice, arising from an agent’s knowledge, is based upon the principle, that it is the duty of an agent to com-

municate facts material to the interests of his principal, of which he has notice or knowledge arising from or connected with the subject matter of the agency; and upon grounds of public policy it is presumed he has communicated such facts to his principal; but if he has not, still the principal, having intrusted the agent with the particular business, the other person has the right to deem the agent's knowledge obligatory upon his principal; otherwise the neglect of the agent might operate most injuriously to the rights and interests of such person."

*3 Corpus Juris Secundum*, page 195,  
Sec. 262.

Under the above principle, Julia Mosher Collins was charged with knowledge of the execution of the assignment in question some two months prior to her death, and hence, she must be held to have either approved the assignment in advance or ratified it after it was made and before her death.

Julia Mosher Collins gave a power of attorney to Mrs. Mosher, her mother, which placed it in Mrs. Mosher's power to handle and control the mortgage as she saw fit. If Mrs. Mosher abused that confidence, Julia Mosher Collins, who trusted her, must stand the loss as against the plaintiffs who are innocent persons dealing with the property in good faith and for value. (36, 74-76)

*19 American Jurisprudence*, Secs. 67-69, p. 695,  
698  
*Kearby v. Western States Securities Co.*,  
31 Ariz. 104; 250 Pac. 766  
*21 Corpus Juris*, Secs. 176, 180, p. 1172, 1176  
*Klein v. Munz*, 286 Pac. 112

The quasi estoppel of Julia Mosher Collins is binding upon her daughter, who takes as one of her heirs.

*19 American Jurisprudence*, Sec. 155, p. 811

*In re Davis Estate*, 101 Pac. (2d) 761, 764

*In re Davis Estate*, 102 Pac. (2d) 545

Appellants argue that the assignment of mortgage from Julia Mosher Collins to James Dean Collins, her husband, was void because her attorney in fact, Hattie L. Mosher, had an interest in the mortgage. The difficulty with this argument is that it is not supported by the facts. The principle that authority to the agent to do acts for his principal's benefit does not authorize him to do such acts where his own interest conflicts with his duty to his principal, is too well established to be questioned, but the record in this case shows that Mrs. Mosher had no interest in the mortgage in question. The mortgage was the property of her daughter, Julia Mosher Collins. It was simply a lien upon land which Mrs. Mosher owned. Mrs. Mosher's interests were not affected by an assignment of this mortgage from her daughter to her son-in-law. Presumably the son-in-law would be more insistent upon collection than the daughter. The assignment recites receipt of the full amount of the mortgage as consideration for the assignment. Whether or not she received this is immaterial so far as the appellees are concerned. The Rule applicable to this situation is well stated in 3 *Corpus Juris, Secundum*, pages 184, 185, Section 253, as follows:

“The principal is not bound by contracts made by his agent within his general scope of authority in which the agent has an individual interest adverse to that of the principal when the contracting third party has notice of such interest; but the

rule is otherwise if the third person is not charged with such notice.

“As a principal is not bound by the contract of his agent beyond the scope of his actual apparent authority, it is an a fortiori conclusion that contracts made by his agent in his name without authority and for the agent’s benefit and to his individual interest have no greater capacity for creating liability for the principal. In addition to this obvious application of the general doctrine of agency, the principal is not bound by contracts, made by his agent within the scope of the agent’s authority but in the furtherance of the agent’s individual interests to the knowledge of the other party to the contract, particularly where the contract was made without the principal’s knowledge and consent. The rule applies equally whether the notice that the agent is acting for his own benefit rather than that of his principal appears from the face of the contract itself, or from the nature of the transaction, or from the constructive notice of the record books. \* \* \* On the other hand, it is to be borne in mind that it has been the tendency of courts to protect those dealing in good faith with the unfaithful agent, who, authorized to handle the property of his principal, has misapplied it, where it appears that the agent has the actual power to perform the act, not for his own, but for the principal’s benefit. Accordingly where the third party acted in good faith and with no notice of the fact that the agent was acting for his own benefit, the principal cannot avoid liability on contracts made with the agent’s authority.”

See *Union Trust Co. of Spokane v. McAllister Warehouse Co.*, 259 Pac. 16; 145 Wash. 125.

In this case the appellees purchased the property in good faith and were not charged with notice of anything that Mrs. Mosher may have done, except what



appeared from the record books. What appeared there was simply that Mrs. Mosher under the authority of her Power of Attorney, which this court in another case characterizes as almost unlimited, assigned the mortgage in question for the full face value thereof, the assignment being from wife to husband. Obviously, this gave no indication that Mrs. Mosher might benefit by the transaction. Certainly, it cannot be contended that those seeing such an assignment on the record books must take notice that Mrs. Mosher and her son-in-law might be conspiring to cheat Julia Mosher Collins or her daughter, out of their property.

The rule is stated in, 1 *Restatement of the Law of Agency*, page 403, Sec. 165, as follows:

“A disclosed or partially disclosed principal is subject to liability upon a contract purported to be made on his account by an agent authorized to make it for the principal’s benefit, although the agent acts for his own or other improper purpose, unless the other party has notice that the agent is not acting for the principal’s benefit.”

There being no decisions in Arizona to the contrary, the above quotation from the Restatement of the Law of Agency is the law of Arizona, the Supreme Court of the State having so declared in several cases.

*Lightning Delivery Co. v. Matteson*, 45 Ariz. 92, 99; 39 Pac. (2d) 938

*Smith v. Normart*, 51 Ariz. 134, 143;  
75 Pac. (2d) 38

*Cole v. Arizona Edison Co.*, 53 Ariz. 141, 144;  
86 Pac. (2d) 946.

*Maricopa Co. v. Arizona Citrus Land Co.*,  
55 Ariz. 234, 239;  
100 Pac. (2d) 587.



*Waddell v. White*, 56 Ariz. 525, 527;  
109 Pac. (2d) 843.

It is clear from all the authorities that this case does not come within the rule of an agent's misusing authority granted to him by a principal for the agent's own benefit, but comes within the principle of where an authority is granted by the principal to an agent and a bona fide purchaser for value purchases property, (34, 36, 74-76) relying on the performance by the agent of authority that has been duly granted to him without knowledge that the agent has used the authority for his own benefit.

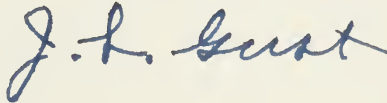
The trial court also found that the plaintiffs took possession of said premises under their warranty deed from Mrs. Ganz, and ever since have been in possession thereof, claiming title as against the whole world, and that such possession has been a visible and open and exclusive appropriation of said premises, and plaintiffs since said date have paid taxes upon said premises, (32-33). The date of the Warranty Deed to the plaintiffs is May 1st, 1934, and it was recorded on the same day, (169-172). Consequently, plaintiffs are entitled to claim title by adverse possession under Section 29-104, Ariz. Code Ann., 1939, formerly Sec. 2052, Revised Code of Ariz., 1928. It is true that Mrs. Mosher's testimony tends to show that Julia C. Collins has not been twenty-one years of age for five years last past, but in view of the evasiveness of her testimony and her interest in the case, we do not believe that the

defendants have met the burden of proof to show the statute did not run against Julia C. Collins by reason of her minority.

We respectfully submit that the judgment of the trial court should be affirmed.

GUST, ROSENFELD, DIVELBESS,  
ROBINETTE & COOLIDGE  
Professional Building,  
Phoenix, Arizona,

By J. L. GUST  
Attorney for Appellees

A handwritten signature in blue ink, appearing to read "J. L. Gust". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.



No. 10,187

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit 9

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JULIA C. COLLINS and HATTIE L. MOSHER,  
*Appellants,*

vs.

JOE O'CONNELL and JESSIE B. O'CONNELL  
(husband and wife),  
*Appellees.*

**APPELLANTS' REPLY BRIEF.**

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PLATT, HENDERSON, WARNER,  
CRAM & DICKINSON,  
Porter Building, Portland, Oregon,  
*Attorneys for Appellants.*

E. E. SELDEN,  
NOAL R. GRAY,  
Luhrs Tower, Phoenix, Arizona,  
*Of Counsel.*

FILED

JAN 18 1943

PAUL P. O'BRIEN.  
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No. 10,187

IN THE

**United States Circuit Court of Appeals**

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JULIA C. COLLINS and HATTIE L. MOSHER,  
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vs.

JOE O'CONNELL and JESSIE B. O'CONNELL  
(husband and wife),  
*Appellees.*

**APPELLANTS' REPLY BRIEF.**

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Without waiving the other points made in the opening brief the appellants will confine this reply brief to three salient features of appellees' answering brief.

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**I.**

**THE FIRST CONCERNS THE EFFECT OF THE DISMISSAL OF THE APPELLEES FROM THE FORECLOSURE SUIT UPON THE GERARD MORTGAGE.**

Appellees admit in their brief (page 9) that if Julia C. Collins was in fact the owner of the Gerard Mortgage that the Ganz mortgage would then be merely a second mortgage.

The general rule is that when the first mortgage is foreclosed it is not essential to make the second mortgagees parties to the foreclosure suit.

“While the practice in some jurisdictions requires junior encumbrancers to be made parties, and in some jurisdictions they are given notice of the order, or judgment, for foreclosure, the general rule is that a junior encumbrancer is not a necessary party to a suit by a senior mortgagee to foreclose in such a sense that his presence on the record is necessary to a valid decree, but it is always both proper and prudent to join him as a defendant, both to give him an opportunity to defend and to extinguish his right of redemption.”

42 *C. J.*, page 57, Section 1580.

Since appellees were made at the inception parties to the foreclosure suit of Julia C. Collins it is clear that they had notice of the suit with the right to intervene and that the only other right which appellees could have would have been the right to redeem which has long since expired.

Appellees insist, however, that if Julia C. Collins was the owner of the Gerard Mortgage, then the appellees, as purchasers from Mrs. Ganz, were the owners of the land subject to the Gerard Mortgage.

It is difficult to see any reason why Mrs. Ganz, or her successors in interest, would have any greater right to be made parties by reason of their second mortgage than was the second mortgagee before the foreclosure suit to which the first mortgagee was not made a party. Whatever rights Mrs. Ganz and her successors had after the foreclosure were derived nec-

essarily from the mortgage which was foreclosed. Since the first mortgagee was no party to the suit her rights could not be affected.

*Finley v. U. S. Bank*, 11 Wheat. 304, 6 L. ed. 480;

*Atkins v. Volmer*, 21 Fed. 699;

*Young v. Montgomery, etc. R. Co.*, 30 F. Cas. No. 18,166, 2 Woods 606.

Since the appellees admit the title of Mrs. Ganz was subject to the Gerard Mortgage, if it was in truth the property of Julia C. Collins, it follows that upon the foreclosure of the Gerard Mortgage the rights of Mrs. Ganz were foreclosed, except the right of redemption, which was not exercised. Any other conclusion would allow the second mortgagee to enlarge her rights against the first mortgagee by virtue of a suit to which the first mortgagee was not a party.

However, even if the change in the status of Mrs. Ganz from second mortgagee to owner, subject to the Gerard Mortgage, would make it necessary to join Mrs. Ganz in order to remove her deed as a cloud upon the title, which we do not concede, it could not possibly affect the right of appellant, Julia C. Collins, to foreclose her prior right against the owner of the land and her Special Master's deed emanating from the first mortgage would necessarily take precedence over the deed resulting from the second mortgage leaving the latter but an empty shell and a mere cloud upon the title. A foreclosure suit unlike a conveyance from the owner can ripen into no greater title than that which was possessed by the person whose interests were fore-

closed. Since the interest of the appellant Mosher was subject to the Gerard Mortgage at the time of the foreclosure it follows that the only title conveyed by the Ganz deed was the equity of Mrs. Mosher over and above the Gerard Mortgage which equity was wiped out by the foreclosure of the Gerard Mortgage.

Moreover the Court will note that Julia C. Collins was the defendant in the Court below and there can be no question in this suit as to the doctrine of a multiplicity of suits preventing appellant from removing the cloud of appellees' claimed title. The matter is the other way around, it is the appellees who are trying to remove the deed of Julia C. Collins derived from a prior mortgage as a cloud upon their title. This it is quite clear the appellees cannot do under any view of the law.

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## II.

**THE SECOND CONCERNS THE ARGUMENT THAT THERE WAS NO SUCH RECORDED INTEREST OF THE APPELLANT, AND ATTORNEY IN FACT, H. L. MOSHER, IN THE GERARD MORTGAGE AS TO INVALIDATE THE ASSIGNMENT MADE BY SAID H. L. MOSHER AS ATTORNEY IN FACT OF JULIA MOSHER COLLINS, DECEASED.**

Appellees are compelled to admit that:

“The principle that authority to the agent to do acts for his principal's benefit does not authorize him to do such acts where his own interest conflicts with his duty to his principal, is too well established to be questioned \* \* \*”

(Appellees' Brief, page 15.)

But appellees say that Mrs. Mosher had no interest in the mortgage in question.

Let us see what the record shows upon this point.

The mortgaged premises were deeded from Green and Griffin to Hattie L. Mosher on July 1, 1914. (T. of R. p. 210.) This deed was subject to the mortgage in question. See page 211:

“\* \* \* Warrant \* \* \* the premises unto the said Hattie L. Mosher \* \* \* Except a certain mortgage Dated \* \* \* Recorded \* \* \* in Book 85 of Mortgages at page 303. \* \* \*”

This mortgage was extended on October 7, 1918 to February 24, 1928, and in this extension of mortgage we find the following:

“Now, Therefore, in consideration of said extension, said Hattie L. Mosher agrees to pay said promissory note with the specified rate of interest thereon upon the 24th day of February, 1928.”

(T. of R., pages 180 and 215.)

All instruments were duly recorded.

How a greater interest could possibly appear of record is hard to imagine.

Mrs. Mosher was not only the record owner of the mortgaged premises but had even assumed and agreed to pay the promissory note upon which the Gerard Mortgage was based. Likewise Mrs. Mosher had procured the ten years' extension of the note and mortgage by an agreement to pay the same. (See R. page 180.) All duly recorded.



Appellees say:

“Mrs. Mosher’s interests were not affected by an assignment of this mortgage from her daughter to her son-in-law. Presumably the son-in-law would be more insistent upon collection than the daughter.”

(Appellees’ Brief, page 15.)

We know of no such presumption.

Even if such a presumption did exist it would be rebutted by the actual facts as disclosed by the record.

Julia Mosher Collins died two months after the assignment was made. The mortgage would not have been subject to the control of Julia Mosher Collins, but to her executor, or administrator, in Oregon.

It is entirely clear that it would be easier for Mrs. Mosher to obtain the release of this mortgage upon a part of the premises without consideration than it would have been to obtain such a release from the fiduciary in charge of her daughter’s estate. The probate laws would be thus evaded and the husband would be immediately and without legal expense vested with his wife’s separate property.

Why should he not be generous under these conditions?

The record shows that the assignment recites a consideration of \$9000.00 as paid. However, Mrs. Mosher testified that James Dean Collins did not even know about the assignment.

The recital of consideration is not even an essential part of the recorded instrument. All written instruments import a consideration.

It is not unusual that the true consideration is not shown in a conveyance. The assignment in question was not under oath and the recitation of consideration found therein would be merely hearsay. Clearly a purchaser has a right to rely upon the record so far as the conveyance itself is concerned, but the doctrine cannot be stretched to cover such collateral matters as the actual amount of consideration paid which is immaterial so far as the effectiveness of the conveyance is concerned.

Certainly if the whole assignment is voidable and subject to attack because of the recorded interest of the attorney in fact in the mortgage this would include such collateral matters as the mere recital of a fictitious consideration.

The record at the time of the execution of the Ganz mortgage affirmatively showed that the release of the Ganz mortgage from Lot 2, upon which the Ganz mortgage was afterwards placed, was wholly without consideration because the whole note and mortgage against the remaining property without any reduction whatever was assigned to A. B. C. Davenport. (Record, page 192.)

Surely a record showing upon its face that Mrs. Mosher had assigned a mortgage upon her own land, which she had assumed and agreed to pay, from her daughter to her son-in-law who purported to release part of the mortgage *without consideration* so that a new mortgage could be placed thereon by the very agent who executed the assignment would be a sufficiently suspicious circumstance to have put the mort-

gagee upon notice and inquiry which would immediately lead to the discovery of the death of Julia Mosher Collins and the very apparent reason for the assignment. Some sort of written ratification of the acts of Mrs. Mosher would have been the least which could have been required from Julia Mosher Collins or her estate.

The appellees correctly quote the law applicable to the present case from:

3 *Corpus Juris Secundum*, pages 184, 185, Section 253, as follows:

“The principal is *not bound* by contracts made by his agent within his general scope of authority in which the agent has an individual interest adverse to that of the principal *when the contracting third party has notice of such interest*; but the rule is otherwise if the third party is not charged with such notice.”

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### III.

#### THE THIRD POINT CONCERNS THE CLAIMED ADVERSE POSSESSION FOR A PERIOD OF FIVE YEARS.

The complaint clearly shows that it was brought upon the theory of actual adverse possession as contemplated in the Revised Code of Arizona of 1928, Section 2050.

However, Mr. O’Connell freely admitted that he held under a lease from Mrs. Mosher until the date of the Ganz deed to him which was recorded June 6, 1934. (T. of R., page 4, par. VI.) (See Reporter’s Transcript, pages 78 and 79.)

Mr. O'Connell further admitted that the O'Connell Brothers, Incorporated, and not he, had the lease on the premises from Mrs. Mosher. He also admitted that O'Connell Brothers, Incorporated, were in possession of the land when the Ganz deed was given and still remain in possession. (T. of R. page 78.)

It was further conclusively shown by the admissions of Mr. O'Connell, himself, that the O'Connell Brothers are a separate and distinct entity from himself and Mr. O'Connell was conclusively impeached in so far as his claim to actual possession is concerned. (See entire cross-examination. Record, pages 78 to 81.)

Mr. Joe O'Connell, personally, has never even gone into possession of the premises at any time as conclusively shown by the evidence.

Faced with this complete failure of proof under Section 2050 under which the complaint was framed the appellees seek in their brief to uphold their title under Section 2052, Revised Code of Arizona, 1928.

The difficulty here, however, is even more insurmountable than under the original theory pursued by appellees.

Section 2052 requires that the owners must have paid the taxes thereon for five *consecutive* years next preceding the institution of the action.

The complaint was filed January 30, 1940. The deed from Mrs. Ganz was recorded June 6, 1934, while the lien for the taxes went on the land the first Monday in January, of 1934. (See Revised Statutes of 1913, Section 4845, on page 1563, which governs.) However, the

taxes were being paid by the O'Connell Brothers, in conformity with their lease, which has never been terminated. The Revised Statutes of 1913, paragraph 4711, page 1512, is very emphatic that :

“When any person enters into the possession of real property under a lawful lease, he shall not while so in possession deny the title of his landlord in an action brought by such landlord, or any person claiming under him, to recover possession of the property.” (Consolidated and Revised in R. C. 1928, Section 1954.)

The very receipts filed by appellees to prove payment of taxes conclusively show as to City and County taxes that they were not all paid by Mr. O'Connell and particularly that the County taxes for the last half of 1936 were paid by the O'Connell Brothers. Many receipts do not show who paid them; many do not show to whom assessed. The last half of the County taxes for 1936, were paid by the O'Connell Brothers April 29, 1937. There is no showing who paid the first half of 1937 nor the second half of 1938. The first half of 1938 was not paid until eleven (11) days after delinquency. The years of 1935, 1936, 1937, were assessed to Joe O'Connell. The County receipts do not show to whom the years of 1938 and 1939 were assessed.

As for the tax receipts for the City they show, out of the 17 payments claimed, that there were 14 payments delinquent when paid, while only 3 payments were made on time. Four City receipts do not show who paid them.



Moreover the record conclusively shows that Julia C. Collins had not been of age five years when the action was commenced.

Ignoring all oral testimony, the power of attorney filed by the appellees, page 185 of the T. of R., recites:

“That I Julia Winifred Mosher Collins, formerly and until September 16th, 1914, Julia Winifred Mosher \* \* \*”

That would place the fall of 1915 as the earliest date on which Mrs. Collins could have had a child, and there is nothing in the record to show that Julia C. Collins was the first child, only that she was the only child at the time of her mother's death. Five years allowed by law for the bringing of a suit added to the twenty-one (21) majority would be 26 years which added to 1915 would be the fall of 1941. The appellees filed their complaint alleging five years of possession and tax paying January 30, 1940. Section 707, page 389, of the Civil Code of the Revised Statutes of 1913, recites:

(3) \* \* \* and such person shall have the same time, after the removal of his disability, that is allowed to others by the provisions of this title.”

Certainly the presumption would be that the granddaughter was not born until after the marriage which conclusively fixes her age at less than twenty-six (26) years at the commencement of this action. Section 2057, Revised Code of 1928, tolls the statute of limitations on real property until the prescribed period after the age of majority is attained.



It is needless to prolong this brief further on the question of adverse possession as it is clear that appellees' title must stand or fall upon the question of the ownership and status of the Gerard Mortgage and the various steps leading to the Special Master's deed flowing therefrom.

Dated, Portland, Oregon,  
January 18, 1943.

Respectfully submitted,  
PLATT, HENDERSON, WARNER,  
CRAM & DICKINSON,  
By WILBER HENDERSON,  
*Attorneys for Appellants.*

E. E. SELDEN,  
NOAL R. GRAY,  
*Of Counsel.*

No. 10,187

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit 10

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JULIA C. COLLINS and HATTIE L. MOSHER,  
*Appellants,*

VS.

JOE O'CONNELL and JESSIE B. O'CONNELL  
(husband and wife),  
*Appellees.*

**APPELLANTS' PETITION FOR A REHEARING.**

---

PLATT, HENDERSON, WARNER & CRAM,  
Porter Building, Portland, Oregon,  
*Attorneys for Appellants  
and Petitioners.*

THOMAS O. MARLAR,  
313 North Center Street, Phoenix, Arizona,  
*Of Counsel.*

FILED

JUN 24 1943

PAUL P. O'BRIEN,  
CLERK



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*To the Honorable Curtis D. Wilbur, Presiding Judge, and to the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:*

The appellants respectfully request a rehearing in the above entitled cause on the reasons and conditions hereinafter set forth:

1. The record shows, and the Opinion of this Honorable Court indicates, that the appellees not only had constructive notice, but actual notice of the mortgage against Hattie L. Mosher.

2. The record shows that the appellees were fully aware of the power of attorney held by the appellant, Hattie L. Mosher, and of her interest in the property.

3. It was a matter of record that one of appellants was a minor—no guardian, nor guardian ad litem was appointed. (T. of R. page 15.)

4. No suit to quiet title could be had until a proper representation of a guardian having been appointed for this minor hence all proceedings in this matter are void.

5. A rehearing should be granted for other errors of commission and of omission all apparent on the face of the record.

Dated, June 23, 1943.

Respectfully submitted,

PLATT, HENDERSON, WARNER & CRAM,  
*Attorneys for Appellants  
and Petitioners.*

THOMAS O. MARLAR,  
*Of Counsel.*









